XIII
40

Unrepealed Circular order of the High Court of Judicature at Fort William in Bengal

from 1862 to 1876

(Criminal)

Year. 1876

Subj. — Judicial administration / Manual / High Court / Bengal / Fort William.

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TABLE OF CONTENTS.

PROCEDURE.

Circulars on criminal procedure, arranged according to the order of subjects in the Procedure Code.

	PAGE.
European British subjects under commitment to High Court, secs. 71-88 ...	1-4
Form of warrant	4
Police Inquiry. Limits of authority of police in certain cases, sec. 117 ...	5
Discretion of Court as to mooktears appearing in defence, sec. 186 ...	5
Examination of accused prior to commitment, sec. 193	6
Commitment. What papers to be included in record of commitment, sec. 198	7
Commitment to Sessions, sec. 198	7
Sessions trial, secs. 231-265	8
Commitments. Sessions Court's remarks on commitment	8
Prisoners' names	9
Jurors and Assessors, secs. 240-243, &c.	9
Charge to Jury, secs. 255-464	10
Appeals to be accompanied by copy of judgment and not of sentence merely, secs. 275-464	11
Appeals to Sessions Court from prisoners in jail	11
Result of appeals to Sessions Court. Intimation to prisoners in jail, sec. 276	12
Appeals to High Court from prisoners in jail	13
Appeals to High Court	13
In what cases appeals not to be forwarded to High Court by Jail Superintendents	14
Supplementary evidence before Appellate Court, sec. 282	14
References in revisional jurisdiction, secs. 292-300	15
Execution of sentence, secs. 321-322	16
Warrants of imprisonment. Language	17
Warrant of commitment, sec. 303	17
Warrant of commitment for transportation	17
Death warrant	18
Warrant for levy of fine	18
Separate warrant for each several prisoner	19
Residence of prisoners to be noted in warrants of imprisonment ...	20
Register of warrants	21
Warrants of imprisonment for more than two years to be on superior paper	22
Release warrant unnecessary	22

PAGE.

Warrants of imprisonment in case of military convicts 22
Death warrant how to provide for date of execution 22
Returns to warrants of capital sentence, sec. 305 23
Levy of fines, sec. 307 23
Currency of sentence on escaped prisoners, sec 316 24
Reformatories, sec. 318 25
Sentences of transportation, sec 319. Certain consideration as to imposing or dealing with these sentences 25-30
Oaths and affirmations, section 331, Criminal Procedure Code, and section 7, Act X, 1873 31
For witnesses: oath, affirmation 31
For interpreters: oath, affirmation 31
For jurors: oath, affirmation 31
Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeals to High Court 32
Particulars for identifying persons examined as witnesses 32
Recording evidence 32
Examination of witnesses:—Rules 33-34
Prompt examination of witnesses after their appearance 34
Daily register of attendance of witnesses 35
Mode of calculating detention of witnesses 36
Recording evidence in warrant cases, sec. 335 37
Confessions, recording of, sec. 346 38
Summonses on Medical subordinates of district to be served through District Magistrate and intimated to Civil Surgeon, sec. 351 ... 39
Summonses on Police Officers to be served through District Superintendent or Assistant Superintendent, sec. 351 39
Witnesses arrested under a warrant to be treated as persons under civil process, secs. 352-355 40
Recognizances, secs. 391, 396, and 397 40
Finding in case of acquittal on ground of lunacy, sec. 429 41-43
Charge of perjury, sec. 440 43
Recording sentences, secs. 461-464 43
Register of convictions of heinous offences, secs. 461-464 44
Conviction of any military employé to be intimated to Military Department 45
Prosecutions of public servants, sec. 466 46
Security for good behaviour, secs. 507-512 46
Possessory award under sec. 530 47

PENAL CODE.

Prosecutions for false charges, sec. 211 48
In convictions of culpable homicide; exceptions under sec. 300 ... 49
Hurt, grievous hurt, culpable homicide, secs. 323, 325, 302 ... 50

THE WHIPPING ACT.

(ACT VI OF 1864.)

General instructions thereon... 50-54

PLEADERS, MOOKHTARS, &c.

PAGE.

[See volume of Civil Orders.]

PROCESSES.

Table of fees for processes (High Court rules under sec. 20, Court Fees' Act) 54-56
Scale of nazirs' and peons' pay (sec. 20, Court Fees' Act) 56
District establishment of peons (sec. 22, Court Fees' Act) 57
Processes in other jurisdictions to be easily legible. Also, where necessary, to be accompanied by translation 58

MISCELLANEOUS.

Holidays how far available for criminal courts—Dusserah vacation ... 59
Civil Court holidays 60
A Sessions Judge quitting a district towards the end of a year is required to record his opinion of the work of his subordinates 60
Mookhtars, &c., to renew their certificates 61
Intestate property 61
Form No. 1.—Register of unclaimed property disposable under clause 16, section 16, Regulation XX of 1817 (now secs. 25-27, Act V of 1861) 62
" " 2.—Register of lawaris property disposable under section 7, Regulation V of 1799 62

RECORDS.

Arrangement and disposal of records of criminal cases 63-65
Compilation of medico-legal reports 65
COPIES, rules as to copying rates, procedure, &c.... 66-67

FORMS FOR REGISTERS.

No. 1.—Register of criminal complaints 67
" 2.—Record-keeper's register 68
" 3.—Book of appeals 68
" 4.—Book of references from other districts 68
" 5.—Miscellaneous matters 68
Register of criminals convicted of heinous offences 68
Register of attendance of witnesses 68
Registers of unclaimed and lawaris property 68
Register of sentence warrants 68

PERIODICAL RETURNS.

MONTHLY RETURNS.

Monthly returns to Magistrates and Judges from subordinate courts ... 69-70
Monthly statement showing average duration of cases 71

QUARTERLY RETURNS.

Blank quarterly statements not to be submitted to High Court ... 72
Sessions statements D, E 72-74
Form of a letter to be sent by committing officers through the Magistrate of the district to the Judge 74

PAGE.

Form of District Magistrate's Calendar. Statement D, part I (Magistrates) statement of offences reported, and of persons tried, &c., in the district of—, during the quarter of— 75
Statement D, part II, miscellaneous cases 76
Statement D, part II, Court of Sessions, statement of commitments ... 76
Statement E, showing the result of appeal and revision in criminal cases ... 77
Sessions statement No. (after each Sessions) being calendar of accused persons committed or remaining for trial 77
Sessions quarterly statement No. 3 (formerly III, IV) 78
Calendar of accused persons tried or brought before the Court of Sessions... 78
Explanations on Sessions statement No. III 79
General explanations on quarterly statements 80-82
Form of quarterly statement E, showing the result of appeal and revision in criminal cases 82
Instructions on quarterly statement D 83
Explanation as to disproportion or apparent disproportion of acquittals to convictions 83
Responsibility of Magistrate and Judge as to control over subordinate courts 84
Magisterial officers employed executively. Time thus occupied how to be dealt with in returns 84

ANNUAL RETURNS.

Annual report on criminal administration statement of number of offences ascertained to have been committed in the year under report as compared with previous year. Statement showing the number of persons brought to trial, &c. 84-85
Statement showing the number of witnesses and their attendance ... 85
Table showing appeals from sentences and orders of Courts of Original Jurisdiction 86
Table showing the number of appeals preferred to the Court of Sessions, &c. 86
Explanations of the annual statements 87
Tabular classification of courts and jurisdictions, their outturn of work, cost, &c., statement No. 1 88
Statement No. 2 90
Explanations and orders on the above 90-91
Schedule of offences under Act XLV of 1860 91-92
Prisoner accused under more than one head of charge 93
Index numbers to prisoners 93
Statement 3, showing the general result of criminal trials 94
Explanations on the above 95
Statement 4, showing the punishments inflicted by various tribunals, &c. ... 96-97
Explanations on the above 98
Statement 5, showing the result of appeal and revision in criminal cases ... 98
Statement 11, showing employment of Juries and Assessors in Civil and Criminal Courts 99
Explanations on the above 99

CHRONOLOGICAL INDEX TO CIRCULAR ORDERS AND MEMORANDA, GENERAL LETTERS, &c.

(CRIMINAL.)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	Subject.	Page.
C. O.	1796	9	30th November	Commitments made whilst sessions are pending	8
	1804	34	19th June ...	Directing how warrants are to be returned after execution of sentence ...	23
C. O.	1808	49	13th April ...	Regarding the trial and commitment of prisoners by the several Judges of Circuit for the division during their residence at each zillah .. .	8
C. O.	1833	135	22nd February	Spelling prisoners' names	9
C. O.	1835	167	15th May ..	Form in which register of sentence warrants is to be maintained	21
C. O.	1837	3	15th December	Unclaimed property not to be confounded with the property of intestates. "Lawaris"	61-63
C. O.	1838	8	23rd March ...	Judges' Courts not to be closed for the dispatch of criminal business during the Dusserah and Moharrum vacations except on close holidays . ..	59-60
C. O.	...	28	7th December	A Sessions Judge quitting a district towards the end of a year to record his opinion of his subordinates	60
C. O.	1842	103	25th January 6th May	A Sessions Judge quitting a district towards the end of a year is required to record his opinion of the work of his subordinates	60-61
C. O.	1843	132	7th April ...	Rules regarding application for copies of papers	66-67
C. O.	...	137	19th May ...	Appeals to High Court	13
C. O.	...	144	16th August ...	Forms of registers...	68
C. O.	...	151	24th November	Forms for cases of unclaimed property and property of intestates	61-62
C. O.	1844	160	19th April ...	Copies of letters, &c., from the Sudder [High] Court not to be granted by local authorities	67
C. O.	1845	194	22nd January...	Prompt examination and daily register of attendance of witnesses	35-36
C. O.	1849	26	20th June ..	Appeals to High Court	13

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L	Year.	No.	Date.	SUBJECT.	Page.
C O.	1851	57	25th April ...	Estates of deceased officers or other military men—Administration in whom vested	63
	1857	20	20th August ...	Rules for the arrangement and disposal of records of criminal cases	64-65
C. O.	1859	8	15th „ ...	Separate warrant for each several prisoner	19-20
C. O.	1860	72	8th February...	Mode of calculating detention of witnesses	36
C. O.	1861	85	5th August ...	Rates for copying	66
	1862	2	13th „ ...	Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeals to High Court ...	32
C. O.	...	6	6th May ...	Appeals to High Court	13
C. O.	...	98	21st „ ...	Explanation as to disproportion, or apparent disproportion, of acquittals to convictions	83
C. O.	...	100	27th „ ...	When several persons are accused of the same offence, and the case is one for the sessions, all should be committed...	7
C. O.	1863	5	5th February...	In convictions of culpable homicide exceptions under section 300, Penal Code, to be specifically noted	49-50
	...	7	11th March ...	In case of jury trials, Sessions Judge to note in column of remarks whether he concurs in the jury's verdict ...	77
	...	10	16th April ..	Possessory award under section 530, Criminal Procedure Code	47
	...	13	8th June ...	How warrants are to be returned after execution of sentence	23
	...	13	13th „ ...	Returns to warrants of capital sentence.	23
	...	18	15th July ...	References in revisional jurisdiction ...	15-16
	...	19	15th „ ...	Prosecution for false charges, section 211, Penal Code	48-49
	1864	2	8th April ...	The Whipping Act—General instructions	50-53
	...	5	6th May ...	European British subjects under commitment to High Court	1
	...	6	16th „ ...	Rules for the examination of witnesses...	33-34
	...	8	22nd June ...	Levy of fines	23-24
	...	9	30th „ ...	Law as to lunacy in criminal trials ...	43

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year	No.	Date.	Subject.	Page.
C. O.	1864	12	27th July ...	Separate warrant for each several prisoner	19
	...	13	28th „ ...	Examination of accused prior to commitment	6
	...	14	5th August ...	Finding in case of acquittal on ground of being lunatic	41
	...	15	11th „ ...	Recognizances	40-41
	...	16	20th „ ...	Recording sentences	43
	...	19	17th September	Particulars for identifying persons examined as witnesses	32
	...	20	4th October ...	Prosecution of public servants	46
	...	21	22nd November	Witnesses arrested under a warrant to be treated as persons under civil process	40
	...	22	10th December.	Finding in case of acquittal on ground of being lunatic	41
	1865	4	23rd June ...	Jurors and assessors	9-10
	...	5	5th July ...	Register of convictions of heinous offences	44-45
	...	6	17th „ ...	Arrangement and disposal of records of criminal cases	63-64
C. O.	...	10	20th November.	Sentence warrants to be addressed to officers in charge of Jails	20
	...	11	20th „ ...	Supplementary evidence before Appellate Court...	14-15
	...	12	27th „ ..	Prompt examination of witnesses after their appearance	34 35
C. O.	1866	3	9th February	Charge of perjury	43
C. O.	...	8	6th August ...	Regarding the commitment of European British subjects for trial before the High Court	3-4
C. O.	...	9	3rd „ ...	Sentences of transportation	25
C. O.	...	11	1st October ...	Register of warrants to be properly kept up	21
	...	13	5th December	Regarding the commitment of European British subjects	4
	...	14	6th „ ...	Summonses on police-officers to be served through District Superintendent or Assistant Superintendent	39-40
C. O.	1867	3	25th March ...	Warrants for prisoners	19-20
C. O.	...	5	12th July ..	Sessions quarterly statement No. 3 ...	78
	...	9	7th August ...	Appeals to High Court from prisoners in jail	13-14

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	SUBJECT.	Page.
C. O.	1868	1	10th January ...	Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil Surgeon	39
	...	2	6th April ...	Whipping Act	53-54
	...	3	16th " ...	Blank quarterly statements not to be submitted to High Court	72
	...	4	2nd " (Civil)	Holidays how far available for Criminal Courts	59
	...	4	6th May ...	Sessions statements D and E	72-77-78
	...	5	28th " ...	Appeals to High Court	13-14
	...	5A	7th September	Forms prescribed for register of criminal complaints	67
C. O.	...	6	9th " ...	Discontinues submission of sessions quarterly statement No. 5	78
	...	7	10th " ...	Residence of prisoners to be noted in warrants of imprisonment	20
	...	8	27th November.	When a person is charged with several offences and convicted of one only, the head of charge on which he has been convicted to be indicated by red underlining	77
	...	9	15th December.	Appeals from orders of District Superintendent of Police which are heard by Magistrate in his executive, not judicial, capacity, are to be excluded from returns to High Court; so also fines on ministerial officers for neglect of duty are not to be entered in Magistrates' statements	83
C. O.	1869	4	21st May ...	References in revisional jurisdiction ...	15
	...	6	2nd July ...	Appeals to Sessions Courts from prisoners in jail	11-12
C. O.	...	7	12th August ...	Records not to be sent to High Court when no second appeal lies	14
	...	8	25th " ...	In what cases appeals not to be forwarded to High Court by Jail Superintendent	14
	...	9	6th September.	Hurt, grievous hurt, culpable homicide, sections 323, 325, 302, Penal Code ...	50
	...	10	22nd " ...	Compilation of Medico-Legal Reports...	65-66
C. O.	1870	1	17th January ...	Sentences of transportation	26
	...	6	22nd February	Separate warrant for each several prisoner	19
	...	7	11th March ...	Index numbers to prisoners	93

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C M., or G. L.	Year	No	Date	SUBJECT.	Page.
C. M.	1870	7	17th December	Monthly returns to Magistrates and Judges from subordinate courts ..	69-70
		10	12th July ...	New form of sessions statement No. 3 to be submitted after each sessions ...	78, 82
	...	13	29th August ...	Discretion of Court as to Mukhtars appearing in defence	5
	...	14	3rd December..	Sessions Courts' remarks on commitment	8-9
C. O.	...	31	4th Nov., Civil	Quarterly returns	69, 78, 80
	...	32	8th „ ...	Explanations on the annual statements	87-89
		32	8th „ .	Judicial statement 11, showing employment of juries and assessors in civil and criminal courts	99
C O.	1871	1	11th January ...	Each criminal court to keep up its own register of warrants according to the form laid down in C. O. 167, dated 15th May 1835 ..	21
C. O.	...	1	11th „	Form in which register of sentence warrants is to be maintained	72
	...	3	2nd February...	Judicial statement No. 2	90-92-95
C. O.	...	4	2nd „ ...	Annual report on criminal administration	84-86
	...	6	17th July ...	Conviction of any military employé to be intimated to Military Department of the Government of India ...	45
	...	7	20th „	Police inquiry.—Limits of authority of police in certain cases	5
		8	27th „ .	Responsibility of Magistrates and Judges as to control over subordinate courts ...	84
C. O.	1872	1	23rd January ...	Commitment—What papers to be included in record of	7
C. O.	..	2	18th March ..	Result of appeals to Sessions Court. Intimation to prisoners in jail... ...	12
	.	3	25th July	Processes in other jurisdiction with different language to be accompanied by translation into that language or into English	58-59
	...	4	10th August .	Evidence—Recording of—	32
C. O.	1873	1	3rd January .	Warrants of imprisonment for more than two years to be on superior paper	22
C. M.	...	1	8th „	Form prescribed for monthly statement showing average duration of cases ...	71-95
C. O.	...	2	18th „ ...	Release warrant unnecessary	22
C. M.	...	2	28th February	Statement showing average duration of cases	71

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year	No.	Date	Subject.	Page.
C. O.	1873	5	11th March ..	Forms of warrant (1) for the execution of capital sentences, (2) for sentences of transportation, (3) for other sentences, and (4) for the levy of fine	16
C. M	.	5	10th June ...	Magisterial officers employed executively	84
C. M.		6	15th July ..	Security for good behaviour .	46-47
C. M.		7	30th „ ...	Confessions—Recording of .	38
C. O.	.	7	10th April ..	Instructions on quarterly statement D, criminal	83
C. O.	...	8	19th May	Explanation as to the disproportion, or apparent disproportion, of acquittals to convictions	83
C. O.		8	19th August ...	Mooktars, &c., to renew certificates ...	61
	...	9	15th July ...	Currency of sentence on escaped prisoners	24
C. O.	...	10	27th August ..	Language for warrants of imprisonment	17
	..	11	10th September	Quarterly statements D and E to be submitted in revised form	80-82
C. O.	...	12	7th June, Civil	Oaths and affirmations, forms prescribed	31
C. O.		12	28th November	Warrants of imprisonment in case of military convicts	22
C. M.	1874	1	12th February	Work done by Honorary Magistrates to be shewn in statement D, Part I	81
C. M.	...	2	20th May	Reformatories. In absence of—sentences under section 318 not to be awarded ..	25
C. O.	...	2	8th June ...	Appeals to be accompanied by copy of judgment, and not of sentence merely	11
C. M.	..	3	3rd „ ..	Statement D, Part II, Court of Session .	76
C. M.	...	4	20th „ ...	Recording evidence in warrant cases	37
C. O	...	13	12th May, Civil	Fees for processes (Magistracy courts) ...	54-56
	...	13	12th „ .	Scale of nazirs' and peons' pay	56-57
		13	12th „ ..	District establishment of peons (Magistracy courts)	57-58
C. O.	1874	4	23rd July ..	In cases of acquittals, observations regarding the propriety of the commitment to be discontinued	77
C. O.	1875	1	5th February	Sentences of transportation	26-28
C. M.		1	1st March ...	Register of criminals convicted of heinous offences.—Rules on the subject contained in C. O. No 5 of 5th July 1865, to be duly observed	45

CHRONOLOGICAL INDEX.—(*Concluded.*)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	SUBJECT.	Page.
C. M.	1875	2	5th March ..	Charge to jury	10
C. O.	...	3	3rd June ..	Prisoner accused under more than one head of charge	90-93
	...	4	17th August ..	Sentences of transportation	28-30
	..	5	24th November	Sentences of transportation ..	30
C. O.	...	6	2nd June, Civil	Copies of exhibits	67
C. M.	1876	A	15th January ...	Judicial statement No 2. (Statement of offences reported and of persons tried, convicted, and acquitted, &c.)	90
C. M.	...	A	15th „ ...	Judicial statement No. 3	95
C M.		A	15th „ ..	Judicial statement No. 4	97-98
C. O.	...	1	28th February	Holidays, how far available for Criminal Courts	60
G. L.		2	25th March	Statement of miscellaneous cases ...	76
G. L.	...	2	25th „ ..	Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court ...	75,76,77
		2	25th „ ..	Instructions on Statements D and E, quarterly	81
C. O.		2	5th May	Death warrant how to provide for date of execution	22
G. L.		3	22nd „	Instructions for filling up column 7, Part II of quarterly statement D	82
	...	4	13th March	Processes in other jurisdictions to be easily legible	58

CIRCULARS ON CRIMINAL PROCEDURE, ARRANGED ACCORDING TO THE ORDER OF SECTIONS OF THE CRIMINAL PROCEDURE CODE.

European British subjects under commitment to High Court.—Secs. 71–88, *Crim. Proc. Code.* (*C. O.*, 1864, *No.* 5, *May* 6*th.*)

It has been represented to the Court that Magistrates and Justices of the Peace, after making commitments to the High Court in its Original Criminal Jurisdiction, do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before the case goes to trial. This Court is not aware of any reason for this delay in sending the record to the Clerk of the Crown, and, after this circular, will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace. The Court takes this opportunity of reminding Magistrates and Justices of the Peace that a copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. The Court also requests the particular attention of Magistrates and Justices of the Peace to rule 3 of the rules circulated for their guidance by circular No. 85 of the Secretary to the Government of Bengal, dated the 27th July 1860, which requires that all witnesses should be bound, in the usual form, to attend at the court-house on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed, and which should be the next following Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions; and if not, then to the next following Sessions.

3. In order to ensure uniformity, the depositions of witnesses should be invariably recorded on foolscap paper and in a legible handwriting, the lines not being too closely written.

4. The following heading should commence each deposition :—

The deposition of , taken under the solemn affirmation prescribed by Act X of 1873 and High Court C. O. 12 of 1873 before me , Justice of the Peace, this day of

5. To save unnecessary labour, the Court think that it would be well if officers requiring such forms applied in the proper quarter for a supply of printed headings of this description.

6. The depositions should invariably be recorded and subscribed as required by the Code of Criminal Procedure.

7. As a rule, cases in which *primâ facie* it may appear that a person is charged with an offence for which he can be tried only by the High Court in its Original Jurisdiction, should be inquired into by magisterial officers who are competent to commit the accused; but if it happens, as sometimes it may, that a charge is entertained in the first instance by an officer who finds that he has no jurisdiction to proceed, and is therefore compelled to stay further proceedings and refer the case to a competent officer, in such cases the evidence should be taken fresh by such competent officer; and as the proceedings held by the first officer do not constitute the legal basis of any subsequent commitment, they should not form part of the record submitted to the High Court, and should not be transmitted as part of the record to the Clerk of the Crown.

8. The Clerk of the Crown states that not unfrequently Justices apply to him for advice and direction on various points, as, for example, respecting the course of the investigation, the sufficiency of the evidence, the number of the witnesses to be sent down, the selecting of some, and other similar matters of detail. The Clerk of the Crown represents that generally he refers such applications to the Solicitor to Government for reply, that officer being able to obtain the opinion of the law officers of the Government. The Court is of opinion that it would be better in such cases, where Justices require advice or direction (except as to what merely concerns the office of Clerk of the Crown), that Magistrates should apply direct to the Solicitor to Government. The Clerk of the Crown has suggested that at the examination of the prisoner the officer in whose charge the prisoner, if committed, will be sent down should

be present, in order that he may be able to prove the examination and signature of the prisoner to it, as in some cases this proof is required to establish the fact of British origin, on which the jurisdiction to commit and try depends. Much inconvenience is often occasioned to witnesses from the mofussil, through their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of Police of Calcutta has charge of these matters, and not the Clerk of the Crown.

C. O. No. 8, *6th August* 1866.

To all Justices of the Peace in the Lower and Extra Regulation Provinces of Bengal.

The Court request the particular attention of Magistrates and others who are Justices of the Peace to the accompanying copy of an order passed regarding the commitment of European British subjects for trial before the said Court.

2. All warrants for the commitment of such European British subjects should be directed to the Superintendent of the Presidency Jail in Calcutta, and should be in the Form C, Schedule II, Code of Criminal Procedure * * * *

3. The Court observe that in several cases in which European British subjects have been lately committed for trial to the High Court there has been great want of care on the part of the committing officers. In one case the witnesses were sent down before the prisoner, who did not arrive until after the conclusion of the Sessions, and after the witnesses had returned. On the prisoner's being brought up for trial there were no witnesses against him, and he was discharged. In other cases, prisoners have been sent down without any witnesses. In others, prisoners have been sent without any warrant of commitment, and the warrant of commitment has been sent afterwards, instead of being delivered to the police-officer in charge of the prisoner. The warrant of commitment ought always to be delivered to the officer in whose custody the prisoner is sent, in order that he may deliver it with the prisoner to the Superintendent of the Jail as his authority to receive and detain the prisoner. Failure of justice has been caused in many cases through such neglect, and the Court trust that Justices of the Peace will be more careful in these respects in future, and that

they will take proper steps for ensuring the attendance of the necessary witnesses at the Sessions. In addition to the warrant of commitment, a warrant should be directed to the police-officer in charge of the prisoner, and should direct him to take the prisoner and deliver him to the Superintendent of the Presidency Jail. A form of such warrant is given below:—

Form of Warrant.

To (the name of the officer or officers sent in charge of the prisoner) and to all other Her Majesty's Peace Officers in the provinces and districts of Bengal, Behar, and Orissa, and places subordinate thereto whom this may concern.

Whereas of is charged with (*state the offence as in warrant of commitment*) and has been committed by me, the undersigned Justice of the Peace for Bengal, Behar, and Orissa,* and the places subordinate thereto, to the Superintendent of the Presidency Jail for trial before the High Court of Judicature at Fort William in Bengal, you are therefore hereby required to receive the said into your custody and to deliver him into the custody of the Superintendent of the Presidency Jail at Calcutta, to be there safely kept until he shall be thence delivered by due course of law.

* This should be according to the appointment to the office of Justice of the Peace.

Dated the day of

* * * * *

In continuation of Circular Order No. 8, dated the 6th August last, requesting the attention of Justices of the Peace to the copy of an order which accompanied it, requiring that European British subjects who during the months of July, August, September, October, and November 1866 should be committed or bailed for trial before the High Court, should be tried at the usual place of sitting of that Court in Calcutta; and if not bailed, should be committed for intermediate custody to the Presidency Jail; and if bailed, should be bailed for trial at such usual place of sitting as aforesaid, the High Court are pleased to extend the operation of the said order until further notice.—(*C. O.*, 1866, *No.* 13, *December 5th.*)

Police Inquiry. Limits of authority of police in certain cases.—Sec. 117, *Crim. Proc. Code.*

The Court finds it necessary to call the attention of Magistrates to the provisions of sections 137, Act VIII of 1869—117, Act X of 1872, which forbid a police-officer in charge of a station from proceeding with the investigation of any case in which he may consider that there is no sufficient ground for entering on an inquiry, or *that the immediate apprehension of the accused is not necessary for the ends of justice.*

2. If he should be of this opinion he is not to proceed with the case, but must report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

3. Where a police-officer in charge of a station is thus precluded from entering upon an inquiry, no other police-officer is competent to make such inquiry, unless he is authorized and required to do so by an order of the Magistrate.

4. The Court desires that the police may be restrained from entering on inquiries in cases where their voluntary action is prohibited by law, and also cautions Magistrates against the indiscriminate use of police agency, which is too frequent in some districts, for the purpose of ascertaining matters upon which the Magistrate is bound to form his own opinion upon evidence given in his presence. This caution is especially needful in respect of cases triable under the 16th chapter of the Code.—(*C. O.*, 1871, *No.* 7, *July* 20*th.*)

Discretion of Court as to Mookhtars appearing in defence.—Sec. 186, *Crim. Proc. Code.*

(*C. O.*, 1870, *No.* 13, *August* 29*th.*)

The High Court are of opinion that injustice and hardship may often ensue from the indiscriminate exercise by Magistrates of the power conferred upon them of refusing to permit mookhtars to act and plead for accused persons in the criminal courts.

2. The Court think fit therefore to point out to all Magistrates and all other criminal courts that the terms of the above law do not warrant any *general rule* for the exclusion of mookhtars in all cases, but only allow the exercise by Magistrates of a discretion in each case as it arises. And the Court expect that Magistrates will not, by indiscriminate exclusion of persons who are invested by law with a

distinct professional status in criminal trials, deprive parties of legal aid, which they could frequently obtain at a moderate cost.

Examination of accused prior to commitment.—Sec. 193, *Crim. Proc. Code.*

It has been brought to the notice of the Court, though the fact is not within the Court's cognizance, that Magistrates, proceeding under chapter XV of the Code of Criminal Procedure, before committing an accused person to the Court of Session, do not, as a general rule, record his examination under section 193 of that Code.

2. Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person, at any stage of the inquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the inquiry.

3. In those few and exceptional cases in which the guilt of an accused is so clear as to be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as by section 195 it is discretionary with a Magistrate to commit or to discharge an accused person according as he finds that the evidence is in his opinion sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation; it being clearly explained to the accused that it is at his option to answer such questions or not.

4. The Court have every expectation that the procedure adverted to in the foregoing paragraph will be henceforth, if it be not already, adopted by all Magistrates, as that most likely to conduce to a perfect administration of justice.

5. The Court, however, desire to explain that in issuing these directions they in no way sanction any proceedings of an inquisitorial nature.—(*C. O.*, 1864, *No.* 13, *July* 28*th.*)

Commitment. What papers to be included in record of commitment.—Sec. 198.

(*C. O.*, 1872, *No.* 1, *January* 23*rd.*)

It having come to the knowledge of the Court that some degree of misapprehension obtains as to what papers should be forwarded (under section 198 of the Criminal Procedure Code) from the Magistrate when a commitment is made to the Court of Session, the following instructions are issued to all criminal authorities.

2. In such cases the record of the Magistrate is to be taken to include—

First.—The proceeding by which the case is originated in the Magistrate's Court.

Secondly.—All papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons, if any, and its return; the warrant and the return, or other documents showing how and when it has been executed; also any search warrant, and the report showing how it has been executed.

Thirdly.—The report, if any, on such inquiry as that under sections 133 and 146.

Fourthly.—The orders, if any, sanctioning the prosecution, when such sanction is necessary.

Fifthly.—The order, if any, withdrawing or transferring the case from one Court to another.

3. The papers on the record of the Magistrate are not evidence in the Court of the Sessions Judge either for or against the accused, except so far as they can be used in corroboration or in the cross-examination of a witness, and are formally put in and accepted by the Court as evidence.

[*Note.*—This must be read subject to the provisions of section 33, Act I of 1872, passed 15th March 1872]

Commitment to Sessions.—Sec. 198, *Crim. Proc. Code.*

When several persons are accused of the same offence, and the case is one for the Sessions, all should be committed.

Circular Order No. 100, *dated* 27*th May* 1862.—Forwards for the information and guidance of the criminal

authorities copy of a letter to the Officiating Additional Sessions Judge of Hooghly, dated the 19th May 1862:—

"I am directed to acknowledge the receipt of your letter No. 158, dated the 6th instant, and to state that when several persons are accused of the commission of the same offence, it would be obviously inconvenient if a Magistrate were to punish some and commit others to the Sessions; and as the Code does not seem to contemplate such procedure, the Magistrate should, if he considers the case to be one for the Sessions, commit all those concerned for trial before that tribunal."

Sessions Trials.—Secs. 231–265, *Crim. Proc. Code.*

Commitments made whilst Sessions are pending.

Circular Order No. 9, *dated* 30*th November* 1796.—A question having been submitted to the Nizamut Adawlut, whether a prisoner committed by the Zillah Magistrates, after the arrival of the Court of Circuit at his station, is to be tried at the session of the Court of Circuit then pending, or at the ensuing session, the Court acquaint such courts, for their guidance in cases of this nature, that they are of opinion, provided the witnesses are in attendance and the trial is in every respect ready to be brought before the Court of Circuit, it should be immediately proceeded upon, in humanity to the prisoner, who must otherwise be kept in confinement till the ensuing jail delivery.

Circular Order No. 49, *dated* 13*th April* 1808.—The Court of Nizamut Adawlut desires that the several Judges of Circuit for the division, on completing the Sessions of jail delivery, will in future admit and try commitments which may be made during their residence at each zillah; and that they will uniformly observe this practice, except in cases where any material delay would occur in procuring the attendance of witnesses, or in other preparations for the trial.

COMMITMENTS.

Sessions Court's Remarks on Commitment.

A diversity of practice appearing to prevail among Sessions Judges with regard to the communication of any

remarks which they may make on commitments made to them to the officers concerned, the Court desire to inform all Sessions Judges and Judicial Commissioners that as a general rule the communication of such remarks is neither necessary nor even very desirable, and should be made in cases the peculiar circumstances of which appear to render necessary the adoption of such a course, but need not invariably take place.—(*C. O.*, 1870, *No.* 14, *December 3rd.*)

Spelling Prisoners' Names.

The Sudder Court have had occasion to remark that sufficient attention is not paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. This is a point of great importance, and should meet with particular attention. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person charged, whenever the name of any one of them is mentioned. Very serious inconvenience has resulted from the neglect of this precaution.—(*Extract from C. O.*, 1833, *No.* 135, *February 22nd.*)

Jurors and Assessors.—Secs. 240, 243, *&c., Crim. Proc. Code.*

As the provisions of the law regarding the record by the Sessions Judge of the opinion of the assessors in cases tried by him, and in districts in which the system of trial by jury obtains, of the verdicts of juries, seem to be imperfectly carried into execution, the Court are pleased to draw the attention of all Sessions Judges to the proper procedure to be observed in these respects.

2. "*The opinion of each assessor shall,*" it is declared by section 262, Code of Criminal Procedure, "*be given orally, and shall be recorded in writing by the Court.*" The Court desire that this record shall appear at the commencement of the judgment of the Sessions Judge. It is not, in the Court's opinion, sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven. What the Court require is, not only the result arrived at by each assessor sitting on a sessions trial, but, if possible, the reasons by which each assessor arrived at

that result; that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions.

3. The Sessions Judges of districts in which trials by jury are held, and all Sessions Judges presiding over trials in which, under section 234, Code of Criminal Procedure, special juries shall be empanelled, should, before commencing the proceedings of the trial, record in English the names of all the jurymen in attendance at the sessions, and after the selection by lot, under section 240, of the persons who are to constitute the jury in the particular case before the Court, they shall also mark the names of those selected. These papers should form part of the record of the case.

4. If, in accordance with section 243, any objection be raised to any juror, the name of the objector, the nature of the objection, and the decision of the court, shall also be recorded.

5. The verdict of the jury shall also be stated on the paper on which the foregoing details are set forth.

6. The Court expect that these instructions will for the future be implicitly observed.—(*C. O.*, 1865, *No.* 4, *June* 23*rd.*)

Charge to Jury.—Secs. 255, 464, *Crim. Proc. Code.*

From Registrar to Additional Sessions Judge of

Dated Calcutta, the 4*th March* 1875.

I am directed to acknowledge the receipt of your letter No. 24, dated 19th February 1875, in which you inquire whether the direction to the jury should be reduced to writing before delivery, or written out afterwards from memory.

2. I am to inform you in reply that it is not necessary that it should be reduced to writing before delivery; but it is essential that the "statement" (sec. 255, Act X of 1872) or "heads of charge" (sec. 464) placed upon the record should represent with absolute accuracy the substance of the charge, and be such as to enable this Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.

Forwarded to all Sessions Judges for information and guidance.—(*C. M.*, 1875, *No.* 2, *March* 5*th.*)

APPEALS.

Secs. 266–286, *Crim. Proc. Code.*

Appeals to be accompanied by Copy of Judgment, and not of Sentence merely

Secs. 275–464.

With reference to the alteration in section 276 of the Code of Criminal Procedure by Act XI of 1874 (the Criminal Procedure Amendment Act), the Court are pleased to issue the following circular order.

2. The High Court find it necessary to call the attention of the several subordinate criminal courts, and of the officers in charge of jails, to the provisions of Act X of 1872, in respect of the submission of criminal appeals. Section 275 of the present law enacts that "every petition of appeal shall be accompanied by a copy of the *judgment* or order appealed against."

3. What the judgment or final order in the case shall contain is enacted in section 464 of the Code:—"The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding." The fourth paragraph of the same section points out that "in trials by jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the jury." In cases tried by jury, therefore, the heads of the Judge's charge to the jury will take the place of the reasons for the finding.

4. No doubt can exist as to the plain requirements of the law in this matter, and the Court desire that the subordinate courts will carefully comply with the provisions of the new Code and discontinue the practice which at present exists in several quarters of furnishing to the person affected, and sending up to the appellate court, a copy of the sentence only with the petition of appeal.—(*C. O.*, 1874, *No.* 2, *June 8th.*)

Appeals to Sessions Court from Prisoners in Jail.

The Court directs that communications from the Officer in charge of the jail to the Sessions Judge relative to the appeals of prisoners to him be made to the Judge direct, and not through the Magistrate of the district, who has no concern with the decisions of the Court of Session made on appeal, unless when the appeal happens to be from his own decision.

2. The appellate court shall in every case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of the Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the appellate court, or to inform the appellant *in writing*, through the officer in charge of the jail, of the result of his appeal. [Compare also next circular.]

3. In cases where an order passed by an officer in charge of a sub-division, other than the sudder sub-division, is reversed or modified on appeal, the appellate court shall certify its decision to the Magistrate of the district, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the appellate court, and will inform the court from whose orders the appeal was preferred of its result.—(*C. O.*, 1869, *No.* 6, *July 2nd.*)

Result of Appeals to Sessions Court. Intimation to Prisoners in Jail.—Sec. 276, *Crim. Proc. Code.*

The High Court has been pleased, on the proposal of the Judge of Jessore, to sanction, and now circulates for general adoption, the form appended hereto as a convenient mode of conveying information to prisoners in jail as to the result of their appeals. A copy will be sent to the Superintendent of Stationery with a view to a sufficient supply being provided.

List of Criminal Appeals heard by the Sessions Judge of
on 18 .

Name of Prisoner	Against whose order the appeal is preferred	Order passed in appeal	REMARKS

MEMO.

Forwarded to the Officer in charge of the Jail for communication to the Appellants.

COURT OF SESSIONS,
The 18 } *Sessions Judge.*

—(*C. O.*, 1872, *No.* 2, *March* 18*th.*)

Appeals to High Court from Prisoners in Jail.

In consequence of different modes of procedure being followed in different districts, the Court are pleased to lay it down as a general rule that petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance, and in the annexed form, to the Judge whose sentence or order is appealed against.

2. Petitions of appeal must be presented within the period allowed for appeal, and must be accompanied by a copy of the judgment or order appealed against.

3. Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but to be returned to the petitioner, with an endorsement by the officer in charge of the jail showing the date of presentation.

TO THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the officer in charge of jail, and has been forwarded to the High Court, as required by section 418 of the Code of Criminal Procedure.

—(*C. O.*, 1867, *No.* 9, *August 7th.*) *Officer in charge of the Jail.*

Appeals to High Court.

Circular No. 5, *dated the* 28*th May* 1868.

In modification of circular order* No. 94, dated the 6th May 1862, the Court direct that as a general rule, in cases

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* *Circular No.* 6 (*old No.* 94), *dated the 6th May* 1862.

In modification of the orders contained in this Court's circular No. 26 (*below*), dated the 20th June 1849, I am directed to inform you that the Court have determined that on any appeal being presented to you for submission to the Sudder Court, if the case so appealed has been tried with the aid of assessors, all the proceedings connected therewith are to be forwarded as heretofore for the consideration of the Court, in case it may be necessary on a perusal of the petition of appeal to refer to the record. Should you, however, have tried the case with a *jury* it will be necessary only to forward to the Court the petition of appeal.

2. Your special attention is requested to section 416, [275], which enacts that "every petition of appeal shall be accompanied by a copy of the sentence or order appealed against."

No. 26, *dated the* 20*th June* 1849.

The Court request that, in transmitting to them (in accordance with the circular order No. 137, 19th May 1843,) petitions of appeal from the orders of the Sessions Courts in criminal trials, you will at the same time transmit the records of commitment and trial in original, without taking copies of them.

2. In the margins of letters transmitting the proceedings, in addition to the dates of the sentences appealed from and of presentation of the petitions, are to be entered the names of all the prisoners in the case, from the sentence in which one or more prisoners may have appealed, distinguishing the prisoners who have appealed from the others.

of appeal to the High Court from the sentence or order of a Sessions Judge, the record shall be forwarded to the High Court by the Sessions Judge immediately on receipt of the notice of appeal directed to be forwarded to him by circular order No. 9, dated 7th August 1867.

Instances having repeatedly occurred of Sessions Judges applying the "general rule" laid down in circular order No. 5, dated 28th May 1868, to cases in which sentences or orders have already been passed by an appellate court upon appeal, the Court directs that records be not sent up in cases in which no second appeal lies, unless the cases be called for by the High Court.

2. In such cases parties should be left to apply to the High Court by motion.—(*C. O.*, 1869, *No.* 7, *August* 12*th.*)

In what cases Appeals not to be forwarded to High Court by Jail Superintendents.

Officers in charge of jails are hereby informed that petitions of appeal from prisoners should not be forwarded to the High Court in cases in which sentences or orders have already been passed by an appellate court on appeal (as, for example, by a Court of Session on an appeal from a conviction before the Magistrate of the district, or other officer exercising the powers of a Magistrate), such sentences or orders being final under section 285 of the Code of Criminal Procedure, except as provided in sections 272 and 297, under the latter of which the High Court may *call for* and examine the record of any case tried by any Court of Session.

2. In such cases parties should be left to apply to the High Court by motion made by a pleader in open court.—(*C. O.*, 1869, *No.* 8, *August* 25*th.*)

Supplementary Evidence before Appellate Court.—Sec. 282, *Crim. Proc. Code.*

The Court request that in any explanation that may be furnished by the courts of criminal appeal regarding any appeals which have remained undecided for more than one month in consequence of further inquiry and additional evidence being called for under section 282, Code of Criminal Procedure, there shall be stated the date on which such

order was passed, so that the Court may thus be in a better position to judge of the real cause of the delay in the decision of such case.

2. The High Court take this opportunity of reminding the lower courts of criminal appeal that any proceedings involving further inquiry or the taking of additional evidence under the law above cited should be promptly completed, in order that the course of justice may not be interrupted more than is absolutely unavoidable.—(*C. O*, 1865, *No.* 11, *November* 20*th.*)

References in Revisional Jurisdiction.—Secs. 292-300, *Crim. Proc. Code.*

It having been brought to the notice of the Court that the practice varies as regards the transmission to the High Court of applications made to the Magistrate under sections 295-296 of the Code of Criminal Procedure, some Magistrates sending up such cases direct to the Court, and others through the Sessions Judge, it appears desirable that the practice should be made uniform. And as the law does not seem to authorize any control or expression of opinion on the part of the Sessions Judge, the Court does not see that any good purpose is served by transmitting the papers through him.

2. Such cases accordingly should not be sent up through the Sessions Judge, and should not appear in his statements 1 and 2.—(*C. O.*, 1869, *No.* 4, *May* 21*st.*)

The High Court have felt much inconvenience from the imperfect manner in which cases have been referred to them under sections 295-296, Criminal Procedure Code, which empowers Sessions Judges and Magistrates to call for and examine the records of courts immediately subordinate to them, in order to satisfy themselves as to the proceedings of such courts being regular, but without the power to alter any sentence or order of such court, save on appeal.

2. They are accordingly pleased to direct that such references shall always be accompanied by the records of the case to which they relate, and by an English letter commencing—"Under section 296, Act X of 1872, and circular order of the High Court, dated 15th July 1863, No. 18, I herewith transmit the record of the case noted in the

margin, to be laid before the High Court, with the "following report." There will then be stated—

1*st.*—A brief analysis of the case.

2*nd.*—The order of the lower court.

3*rd.*—In what particular portion of that order the court making the reference considers an error on a point of law to exist.

4*th.*—The grounds upon which the order of the lower court should be reversed.

Unless there be any particular reason why delay should be avoided, the explanation of the lower court should be called for and accompany the reference.

3. The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them. It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference.—(*C. O.*, 1863, *No.* 18, *July* 15*th.*)

Execution of Sentence.—Secs. 321-322, *Crim. Proc. Code.*

The High Court is pleased to circulate for general adoption the forms of warrant appended hereto, namely—

(1) A form of warrant for the execution of capital sentences.

(2) A form of warrant for sentences of transportation.

(3) A general form of warrant for other sentences (Form D of the Code of Criminal Procedure).

(4) A form of warrant for the levy of fine.

2. The first two forms are applicable to Courts of Session only, but the third form is general, and applies to Magistrates as well as to Sessions Judges.

3. The fourth form relates to fines. This warrant is intended for the use of Courts of Session and Magistrates when it is necessary to enforce a sentence of fine.—(*C. O.*, 1873, *No.* 5, *March* 11*th.*)

Warrants of Imprisonment. Language.

In continuation of circular order No. 5, dated 11th March last, the Court is pleased, with the concurrence of His Honor the Lieutenant-Governor, to direct that warrants of imprisonment directed to Superintendents of District Jails shall be in the English language, and that warrants directed to the keepers of sub-divisional lock-ups shall issue in the vernacular, except where the sentence is for imprisonment of a longer term than 15 days, in which case the warrants issued by sub-divisional authorities shall, if possible, be in English.—(*C. O.*, 1873, *No.* 10, *August 27th.*)

WARRANT OF COMMITMENT (SECTION 303, C. C. P.)

Jailor of

To

Whereas

son of of village

pergunnah in the district of

was convicted before me

Name and official designation (specifying powers in case of Magistrate).

of the offence of

Mention the offence, quoting also Act and section.

and was sentenced to

State the punishment fully and distinctly, mentioning its nature and extent.

you are hereby required to receive the said

into your custody in the said jail of

together with this warrant, and there carry the aforesaid sentence into execution according to law.

Dated the *day of*

WARRANT OF COMMITMENT FOR TRANSPORTATION.

To

Jailor of

Whereas

son of of village

pergunnah in the district of

was convicted before me

Name and official designation

of the offence of

Mention the offence, quoting also Act and section.

State the punishment fully and distinctly, mentioning its nature and extent.

and was sentenced to
you are hereby required to receive the said
into your custody in the said Jail of
in order to the aforesaid sentence being carried into execution according to law.

Dated the *day of*

Sessions Judge.

Death Warrant.

To

Jailor of

Whereas on the day of the month of
in the year 18
son of of village pergunnah
in the district of

Name and official designation

was convicted before me

Mention the offence, quoting also Act and section

of the offence of
and sentenced to suffer death by being hanged by the neck until he is dead, and whereas the said sentence has been duly confirmed by order of the High Court of Judicature,

It is hereby ordered that execution of the said sentence be made and done upon the said
on the of the month of
or so soon thereafter as may be: You are hereby required to receive the said
into your custody in the said jail of
together with this warrant, and there carry the aforesaid sentence into execution according to law.

Dated the *day of*

Sessions Judge.

Warrant For Levy of Fine.

To the Magistrate of the district of
and all other Magistrates and Police Officers within the Sessions Division of

Whereas
son of of village
pergunnah in the district of

Name and official designation.

was convicted before me

of the offence of
and sentenced to pay a fine of
you are hereby required and directed to levy the amount of the said fine by distress and sale of any moveable property belonging to the said

Mention the offence, quoting also Act and section.

Dated the *day of*

Sessions Judge.

Separate Warrant for each several Prisoner.

The Court having reason to believe, from a representation made by the Superintendent of the Alipore Jail, that the circular order of the late Nizamut Adawlut, No. 8 of the 15th August 1859, is not always strictly acted up to, I am directed to request that you will in future be careful that its provisions are never disregarded.—(*C. O.*, 1864, *No.* 12, *July 27th.*)

With reference to the concluding portion of paragraph 2 of circular order No. 3, dated 25th March 1867, on the subject of warrants to officers in charge of jails for the execution of sentences (cited on the margin for facility of reference), the Court is of opinion, without entering into the question of what the law requires, that, as a matter of practice and convenience, a separate warrant should be issued in the case of each prisoner.

"But the law in force now does not require that the Sessions Judge should issue a separate warrant of this nature in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence."

This course should accordingly be observed in future.—(*C. O.*, 1870, *No.* 6, *February 22nd.*)

Circular No. 8, dated the 15th August 1859.

The Court, in compliance with a request made by the Inspector-General of Jails, Lower Provinces, and in order to remedy some inconveniences experienced from the practice of including several prisoners in one and the same warrant for execution of sentence, which the provisions of the circular orders marginally noted do not sufficiently meet, are pleased to order as follows:—

292, May 14th, 1824.
429 } June 18th, 1824.
295 }

(1) In every instance where more than one prisoner is sentenced by one and the same order of the Nizamut Adawlut or Sessions Judge to transportation, or to banishment, there shall be a separate warrant delivered on account of each prisoner to the Jail Daroga of the district jail, to be forwarded to the Magistrate of the district to which a prisoner may be ordered by Government to be sent, or to the Superintendent of the Alipore Jail, as the case may be.

(2) A copy of his warrant shall be delivered to each prisoner.

(3) In the transit of a prisoner from the custody of one Magistrate to that of another, the original warrant and the said copy of the warrant shall be carefully transmitted along with the prisoner.

(4) On the expiration of sentence, or death before expiry of sentence, of a prisoner, the said warrants, original and copy, shall be taken and returned to the Magistrate of the district whence the order for execution of sentence issued.

[The Circular of 1867 above referred to, No. 3 of 25th March 1867, is reproduced here for convenient reference.]

As some misapprehension seems to have existed [1867] in regard to the warrants prescribed by sections 383, 384, and 386 of the [then] Code of Criminal Procedure, the Court is pleased to issue the following explanations and instructions, with a view to the proper observance of the provisions of the Code in the preparation and issue of such warrants.

2. Sections 383 and 384 provide, in cases in which the sentence of the Sessions Court is confirmed by the High Court, as well as where it does not need to be referred for such confirmation, for the issue *by the Court of Session* of warrants to Magistrates, or other officers in charge of jails, to cause the sentence passed to be carried into execution. Under circular order No. 10, dated 20th November 1865, which was based upon the expressed intention of Government to appoint officers, other than Magistrates, to the special charge of large jails, *such* warrants should be addressed to the officer in charge of the jail, instead of the Magistrate of the district. But the law in force now does not require that the Sessions Judge should issue a separate warrant of this nature in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.

3. By section 386, the *Magistrate or other officer in charge of the Jail* is required, in executing the warrant of the Sessions Judge referred to in the foregoing paragraph, in every case of imprisonment under the sentence of the High Court or of the Court of Session, to issue his warrant to the jailor, stating the offence of which the accused person has been convicted, the period during which he is to be imprisoned, and the nature of the imprisonment. As regards warrants of this nature, a separate warrant should be issued to the jailor for each prisoner, and it should accompany the prisoner to whatever jail he may be transferred It is to such warrants also, and not the warrants issued by the Sessions Court, that the provisions of circular order No. 8, dated 15th August 1859, must be considered to apply under the present procedure.

Residence of Prisoners to be noted in Warrants of Imprisonment.

Difficulty and doubt having arisen in the preparation of the "*Roll of Released Prisoners*" (kept by the Police Department) in consequence of the non-insertion in warrants of imprisonment of the place of residence of persons convicted and sentenced, the High Court are pleased to direct that in future judicial officers shall enter in the warrants issued to officers in charge of jails the *residence* of the persons whom they convict and sentence.—(*C. O.*, 1868, *No.* 7, *September* 10*th.*)

Register of Warrants.

It having come to the High Court's knowledge that the register of warrants* prescribed by the Sudder Nizamut Court's circular order No. 167 of the 15th May 1835 has in many districts fallen into disuse, the High Court desire me to call your attention to the above order, and to request that you will in future carefully keep up the prescribed register, column 6 being omitted, as it is no longer required. Instances have lately occurred of prisoners being illegally detained in jail after their term of sentence had expired, which would not have happened if the registers of warrants had been properly kept up.—(*C. O.*, 1866, *No.* 11, *October* 1*st.*)

The Court directs the discontinuance in the office of the Magistrate of the district of the general register of warrants prescribed by the late Sudder Court's circular of the 15th May 1835, No. 167, and the High Court's circular, dated 1st October 1866, No. 11.

2. Each criminal court is enjoined to keep up its own register, and see that its own warrants are duly returned. The form in which the register shall be maintained is that laid down in circular order No. 167, dated 15th May 1835.—(*C. O.*, 1871, *No.* 1, *January* 11*th.*)

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* *Register of Warrants.*

1	2	3		4	5			6
Name of person sentenced.	Date of sentence.	Term of imprisonment where the sentence is imprisonment.		When the sentence will have expired.	Warrants when received back from Jailor or Magistrate.			REMARKS.
		Years.	Month.	Date and year.	Month.	Date.	Year.	

Warrants of Imprisonment for more than two years to be on superior paper.

All Sessions Judges in the Regulation and Non-regulation Provinces are hereby informed that in the opinion of the Court all warrants for sentences exceeding two years should be on paper of a superior quality to that on which warrant forms are now printed. Sessions Judges should therefore indent for forms of such warrants in due proportions, and see that the forms are used in the manner above indicated.—(*C. O.*, 1873, *No.* 1, *January* 3*rd.*)

Release Warrant unnecessary.

The warrant for release of an accused person who has been acquitted, prescribed by the late Sudder Court's circular No. 2, dated the 10th January 1862, is hereby superseded, and criminal courts are informed that they ought in such cases simply to direct that the prisoner be set at liberty.—(*C. O.*, 1873, *No.* 2, *January* 18*th.*)

Warrants of Imprisonment in case of Military Convicts.

The High Court is pleased, at the request of His Honor the Lieutenant-Governor, under instructions from the Government of India, to direct that in all cases where the accused is a soldier or person holding any rank in the army, the warrant for detention or imprisonment shall set forth accurately the rank of the prisoner and the regiment or military department to which he belongs.—(*C. O.*, 1873, *No.* 12, *November* 28*th.*)

Death Warrant how to provide for Date of Execution.

Section 301 of the Criminal Procedure Code directs the Court of Session, on receipt of the order of the High Court confirming a sentence of death, to issue a warrant to the officer in charge of the jail in which the prisoner is confined to cause the sentence to be carried into execution. As it is expedient to provide that a sufficient, but not excessive, interval should elapse between the passing and the execution of such sentences, the High Court directs that the date named by the Sessions Court in its warrant for the execution of a sentence of death shall be not less than fourteen, nor more than twenty-one, days from the date of the issue of such warrant.—(*C. O.*, 1876, *No.* 2, *May* 5*th.*)

Returns to Warrants of Capital Sentence.—Sec. 305, *Crim. Proc. Code.*

The Court do not consider that it is any longer necessary that warrants for the execution of capital sentence should be submitted to them, as the Court think that the court referred to in the latter portion of section 305 of the Code of Criminal Procedure is the Court of Session and not the High Court.

2. Any instance in which a Magistrate may have executed such a sentence in an improper or careless manner should of course be reported to the High Court.—(*C.O.*, 1863, *No.* 13, *June* 13*th.*)

The attention of the Court has been drawn by Government to a letter from the Inspector-General of Jails, Lower Provinces, stating that he has frequently, during the last seven years, become acquainted with instances of irregularities respecting the filing and disposal of warrants, and submitting a letter from the Sessions Judge of Behar, pointing out an instance of delay which has taken place on the part of the Officiating Joint-Magistrate of the district in returning to him the warrants of four prisoners who died in 1858 and 1859.

2. I am desired under these circumstances to call your particular attention to circular order No. 34, dated the 19th June 1804, which directs how warrants are to be returned after execution of sentence.—(*C. O.*, 1863, *No.* 13, *June* 8*th.*)

Levy of Fines.—Sec. 307, *Crim. Proc. Code.*

With a view to introduce uniformity of practice, and to define the limits within which the agency of the police may

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* No. 34, DATED THE 19TH JUNE 1804.

To the Courts of Circuit.

I am directed to inform you that it is the intention of the Nizamut Adawlut that all warrants should be returned to the court by which they are issued after the complete execution of the sentence contained in them, with an endorsement certifying the manner in which the sentence has been carried into execution.

In the case of a sentence both for corporal punishment and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the Magistrate should retain the warrant until the expiration of the term of imprisonment, or return it duly endorsed, should the prisoner die during the course of the term; or, in the event of his being removed to another zillah, the warrant should be transmitted to the Magistrate of the zillah to whom the prisoner may be sent, with information that he is to return it duly endorsed to the court of circuit on the expiration of the sentence or death of the prisoner.

The Court accordingly desire that you will communicate the above remarks to the several Magistrates within your division for their information and guidance.

be exercised in the levy of fines under section 307, Criminal Procedure Code, the Court request attention to the following instructions.

2. Criminal courts are empowered by section 307 of the Code of Criminal Procedure, in certain cases, to issue a warrant *for the levy of the amount by distress and sale* of any moveable property belonging to the offender. This warrant should be directed to a police-officer; and the authority issuing it, following the analogy of English law in such cases, should set a time for the sale and for the return of the warrant. If no one claims the property distrained, the police have the power of selling it, within the time that should be specified in the warrant, without any previous reference to the Magistrate; if a claimant come forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the police. If at any time subsequent to the return to the warrant, and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (section 70 of Penal Code), and the Magistrate has, from information gained in any way, reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of his property within a specified period, returnable within a certain time.—(*C. O.*, 1864, *No.* 8, *June* 22*nd.*)

Currency of Sentence on Escaped Prisoners.—Sec. 316, *Crim. Proc. Code.*

At the instance of the Government of Bengal, the High Court directs that all Sessions Judges and Magistrates, when passing sentences, after their re-arrest, on prisoners who have escaped, will carefully comply with the provisions of section 316 of the Code of Criminal Procedure, and specify in the warrant the date from which the sentence is to take effect, whether at once, or after a lapse of a period equivalent to the portion of the prisoner's original sentence which remained unexpired at the time of his escape; the date on which the original sentence, of which the currency was interrupted by the escape, will expire being clearly shown.—(*C. O.*, 1873, *No.* 9, *July* 15*th.*)

REFORMATORIES.—SEC. 318, CRIM. PROC. CODE.

In absence of reformatories, sentences under section 318 *not to be awarded.*

In accordance with a representation from the Inspector-General of Jails, the Court are pleased to bring to the notice of Sessions Judges and Magistrates that no reformatory, or part of a prison declared to be a reformatory under the Act, exists in Bengal at present. Sentences of confinement in a reformatory, under section 318, Act X of 1872, cannot therefore be carried into effect, and it is better to abstain from passing such sentences.—(*C. M.*, 1874, *No.* 2, *May* 20*th.*)

Sentences of Transportation.—Sec. 319, *Crim. Proc. Code.*

With reference to the form in which many Sessions Judges pass sentence of transportation in cases in which imprisonment is awardable for seven years or upwards, the Court request the attention of Sessions Courts to the terms of section 59 of Act XLV of 1860, from which it will be seen that the correct mode of proceeding is to sentence the offender to transportation, mentioning at the same time that, under section 59 of the Indian Penal Code, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—(*C. O.*, 1866, *No.* 9, *August* 3*rd.*)

The Government of India having, in their resolution in the Home Department, No. 2028-40, dated 28th December 1868, determined on restricting transportation to Port Blair to the cases of life-convicts, the High Court desire to call the attention of all criminal authorities, who are empowered to pass sentences of transportation, to the fact that such sentences, when passed for periods less than life, cannot, in consequence of this restriction, be carried into effect as sentences of transportation beyond sea, but will operate substantially as sentences of imprisonment. The Local Government will doubtless shortly issue instructions as to the places where, and the circumstances under which, such sentences are to be carried out, and it only remains for the Court therefore, without in any way desiring to fetter the discretion vested in them by law, to urge upon the authorities above mentioned the necessity for exercising a sound discrimination in passing sentences of transportation, and of keeping in view that a sentence of imprisonment involves greater suffering, and consequently must be looked upon as more severe than a sentence

of transportation for an equal period.—(*C. O.*, 1870, *No.* 1, *January* 17*th.*)

The following resolution of the Government of India in the Home Department, No. 440, dated the 16th November 1874, is forwarded herewith to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 1, *February* 5*th.*)

Extract from the Proceedings of the Government of India in the Home Department (Port Blair),—No. 440-*S, under date, Fort William, the* 16*th November* 1874.

READ—

Circular of the Home Department, Nos. 2911-18, dated 6th May 1863, drawing attention to the ample accommodation available for convicts at Port Blair, and suggesting the desirability of freer use being made by the Sessions Court of the power vested in them under section 59 of the Indian Penal Code, by which sentences of transportation for not less than seven years may be substituted for sentences of imprisonment.

Circular of the Home Department, Nos. 2085-86, dated the 18th August 1864, directing that transportation may be carried into effect only in cases of convicts sentenced to fourteen years and upwards.

Resolution of the Home Department, No. 2028, dated 28th December 1868 and orders cited therein, restricting transportation to life sentences.

Resolution of the Home Department, dated 19th May 1874, regarding the deputation of the Hon'ble Sir H. Norman, K.C.B., to inspect the Penal Settlement at the Andamans.

Report by the Hon'ble Sir H. Norman, K.C.B., dated the 13th June 1874.

RESOLUTION.—The Governor-General in Council has had under consideration the question of rescinding the resolution of 1868, by which only life-convicts were to be transported to the Andamans. This resolution has been maintained from that date, and the proportion of term to life-convicts has in consequence been very largely reduced. The Superintendent of the Settlement now very strongly urges the necessity of a proportion of term-convicts being kept up, on the ground that such convicts form an important element of safety to the settlement. In this recommendation Sir H. Norman concurs. Upon this view thus supported, His Excellency in Council has decided to waive the considerations of general policy which restricted *transportation* to life-convicts and to permit term-convicts to be sent to the settlement. The maximum proportion which term-convicts should bear to life-convicts will be precisely fixed hereafter, the admitted objects being to provide petty officers and to keep a certain number of term-men among the working gangs With these objects, General Stewart has been desired to report what number of term-convicts he needs at once, and to detail the instalments by which they should subsequently arrive. He has also been requested to mention any particular class or caste of convicts whose transportation may be desirable or useful to the settlement, as also those, if any, who should not be sent.

2. The Superintendent has replied to this reference, and has urged that steps be at once taken to send term-convicts to Port Blair as soon as the transport season opens, because a larger amount of skilled labour than the settlement can now supply is urgently required by him.

He states that there is immediate work for the classes specified in the margin, and if a large proportion of them can be obtained from the Madras jails it will be a gain, as convicts from that presidency stand the climate of the Andamans better, and are more tractable than natives of other provinces.

Classes	No
Carpenters	120
Bricklayers .	120
Stone-masons ...	20
Sawyers .	50
Stone-cutters ..	15
Brass-makers ...	5
Iron-moulders and casters	5
Blacksmiths	50
Shoeing-smiths	3
Brick moulders	5
Surveyors	4
Draftsmen ...	3
Rattan-workers ...	6
Engine drivers .	3
English and Vernacular writers . .	15
Tile makers ...	3
Potters	3
Total	430

3. As it is not, however, expedient, in the interests of discipline, to permit educated men to work as clerks until they have by good conduct in imprisonment become entitled to such light employment, General Stewart recommends that convicts who have been for some years at hard labour in India should alone be selected for employment as clerks at Port Blair. This recommendation is approved by the Government of India

4. He also requires a considerable number of sweepers for conservancy purposes, and in view to secure an ample supply of this class he suggests that the rules regarding age and physique need not be strictly enforced, provided that those selected for transportation are fit for sweeper's work. For the rest he considers that if it be possible to supply the requirements of the settlement without having recourse to dacoits and habitual thieves, it would be desirable, as convicts of these classes rarely settle down to work or give up the practices of their early training in crime. Moreover, dacoits are the most persistent concocters of schemes for escape, and thus help to unsettle the minds of their comrades With these exceptions, the Superintendent does not think it would be expedient to place any restriction on the transportation of term-prisoners who fulfil the usual conditions required of transmarine convicts. These recommendations are also approved

5 It has been already observed that the deportation of term-convicts is now sanctioned in deference to authoritative opinions affirming the necessity for it. In sanctioning this important change of system, His Excellency in Council observes that the substantial reasons which have hitherto caused a different policy to be affirmed must be well known. They concern mainly the difficulty of adjusting the penal system to the two different classes of convicts for a term and convicts for life, so that it shall neither be too indulgent for the former class nor too rigorously severe for the latter. There are also other difficulties touching the status and general treatment of the convict population which are greatly enhanced by mixing together those who are to return to civil society and those who are not to return General Stewart believes, however, that all these difficulties can be surmounted; and His Excellency in Council agrees to the experiment on the understanding that one essential condition of success is that a sentence of

transportation for a term must be carried out with a due rigour. There has hitherto been a general impression that the deterrent effects of transportation have been considerably diminished by reports of time-expired convicts on their return to the main land; and if this impression be well founded, it indicates the necessity of guarding against a serious drawback to the advantages of the mixed system which has now been again admitted.

6. Local Governments and Administrations are therefore requested to inform the judicial authorities of the purport of this resolution, and to report how many convicts of the required description can be contributed from each province. The men selected should have a minimum term of seven years to serve. As one month of the transportation season has already elapsed, this information should be supplied as early as possible.

7. In future, whenever practicable, term-convicts of not less than ten years' sentence should be sent to Port Blair in the proportion of one to every three life-convicts.

In continuation of circular order No. 1, dated the 5th February 1875, the following resolution of the Government of India in the Home Department, No G—321, dated 14th July 1875, is forwarded to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 4, *August* 17*th.*)

Extract from the Proceedings of the Government of India in the Home Department (Port Blair),—No G—321, *under date, Simla, the* 14*th July* 1875.

Read again—

Home Department Resolution No. 2028, dated 28th December 1868, restricting transportation to the Andamans to life sentences

Home Department Resolution No 8-440-51, dated 17th November 1874, re-opening the Andamans to term-convicts.

RESOLUTION.—The resolution of the 17th November, above cited, explained the reasons which induced the Government of India to reverse the orders of 1868 regarding the transportation of term-convicts, and contained general instructions as to the manner in which the change of system should be introduced. It also declared that if it were possible to supply the requirements of the settlement without having recourse to dacoits and habitual thieves, it would be better to avoid sending men of these classes. It further provided that no convicts who had less than seven years to serve, or whose original sentence was for less than ten years, should be sent to the Andamans, and that, whenever practicable, the proportion in each dispatch should be one term-convict to every three life-convicts. The exact proportion which term-convicts should bear at the settlement to life-convicts was, however, left to be afterwards decided. On this point General Stewart's views were that the number of term-convicts should be sufficient to make their weight felt, to effect which there should be, he thought, at least one-third term-convicts to two-thirds life-convicts.

2. The Government of India were at the same time informed that the settlement was able to provide immediately for 1,200 term-convicts; and as term transportation had ceased for some years, it was anticipated that there would be no difficulty in complying with General Stewart's requisition. It was supposed that there would be a sufficient accumulation of term-prisoners in the jails of the several provinces to admit of a sufficient number of term-convicts being selected whose acquirements rendered them specially eligible for transfer, and that it would be unnecessary to recruit from others belonging to the more troublesome classes. These expectations, however, have not been realized. It has been found that comparatively only a few term-convicts were eligible for transportation, as Courts of Session have abstained, as a rule, from passing other sentences of transportation than for life. In fact only 195 altogether appear to have been transported since the 17th November last.

3. It is clear, therefore, that the required proportion of term to life-convicts at the settlement is far from being attained at present. Prior to the recent change of system the proportion of such convicts was about one-tenth of the whole; for there were 7,669 convicts of all classes in the settlement, of whom 733 were term-men, from which number the releases of the year have to be deducted. It is evident, therefore, that to attain the required proportion a large number is still required, and that the requirements of the settlement cannot be supplied if the restrictions mentioned in paragraph 1 are maintained. Moreover, General Stewart has since urged the transportation of dacoits and habitual criminals, rather than check the supply of the necessary number of term-men

4. It has also been represented to the Government of India that any restrictions attached to sentences of transportation introduce an element of uncertainty into judicial sentences. A Judge may desire to award a sentence of term transportation as the punishment best suited to the offence committed; but as long as the carrying out of such a sentence is contingent, not upon judicial considerations, but upon the demand at Port Blair for term-convicts, he will not know whether effect will be given to the sentence actually passed, or whether some other punishment will be substituted for it. He may therefore hesitate to pass an order which may be disregarded.

5. Upon consideration of all these circumstances, the Government of India have resolved that for the next few seasons, and until the desired proportion of term to life-convicts has been attained, as many as possible of the former who have not less than seven years to serve shall be transported to Port Blair, subject only to the restrictions as to physical capacity, prescribed in Home Department orders Nos. 22-1329-1378, dated 18th March 1868, and Nos. 669-675, dated 9th April 1873. Prisoners of the sweeper class are, however, exempted from the provisions regarding fitness for hard labour, and it will be sufficient if they are capable of performing the ordinary duties of their caste; and in order that Courts of Session may no longer be deterred from passing term sentences of transportation by the consideration that such sentences may not be enforced, local Governments are requested to take the necessary measures for acquainting judicial officers with the purport of

this resolution, and to invite their attention to section 59 of the Penal Code.

6. It should be understood that these orders are applicable to male convicts only; female convicts should not for the present be sent to the Andamans, except under sentence of transportation for life.

In continuation of circular order No. 4, dated the 17th August 1875, the correspondence received under an endorsement from the Government of India in the Home Department, No. 13-477, dated the 28th October 1875, is forwarded to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 5, *November* 24*th.*)

No. 13-477, dated Simla, the 28th October 1875.

Endorsed by the Government of India, Home Department.

Copy of correspondence forwarded to local Governments and Administrations, and to the Foreign Department, for information, in continuation of paragraph 6 of resolution No. 9-321-332, dated 14th July last.

No. 4711, dated Simla, the 28th October 1875.

From—The Offg. Secy. to the Govt. of India, Home Department,

To—The Officiating Superintendent of Port Blair.

In reply to your letter No. 700, dated the 16th ultimo, I am directed to express concurrence in your views regarding the objections to the transportation of female term-convicts to the Andamans.

No. 700, dated Port Blair, the 16th September 1875.

From—The Offg. Supdt. of Port Blair and Nicobars,

To—The Offg. Secretary to the Govt. of India, Home Dept.

I have the honor to acknowledge the receipt of your letter No. 333 of the 14th July, enclosing a resolution of the Government of India of the same date, on the subject of the transportation of term-convicts during the ensuing season, and drawing my attention to the last paragraph of the resolution regarding the transportation of female term-convicts, and inviting a full expression of opinion thereon.

2. In reply, I beg to state that the reasons which were given in favour of the transportation of male term-convicts can in no way apply to females, and I am of opinion that term transportation in their case is by no means desirable. The demand for intramural work in the settlement is small, and the employment of females on suitable extra-mural labour is not possible. The accommodation for females is also limited, and male term-convicts are not permitted to marry.

3. Under these circumstances I consider that the transportation of female term-convicts to Port Blair should be prohibited.

Oaths and Affirmations.—Sec. 331, *Crim. Proc. Code, and Sec.* 7, *Act X of* 1873.

The following forms of oaths and affirmations are prescribed by the High Court of Judicature at Fort William in Bengal, under section 7, Act X of 1873.

2. The same forms will be used in criminal as in civil cases.

3. Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

4. In other cases the oaths are to be administered upon such symbol, or accompanied by such act, as may be usual, or as such witness, interpreter, or juror, may acknowledge to be binding on his conscience.—

FOR WITNESSES.

Oath.

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

Affirmation.

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

FOR INTERPRETERS.

Oath.

I swear that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the court may require me to interpret, translate, and explain. So help me God.

Affirmation.

I solemnly declare that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the court may require me to interpret, translate, or explain.

FOR JURORS.

Oath.

I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. So help me God.

Affirmation.

I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.—(*C. O.*, 1873, *No.* 12, *June 7th, Civil.*)

Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeals to High Court.

The High Court are pleased to adopt the following circular order issued by the Sudder Court at Agra on the 26th ultimo:—

"Difficulty having been frequently experienced in deciphering the memoranda of the substance of the evidence of witnesses recorded under the provisions of the Criminal Procedure Code, the attention of all criminal officers is called to the necessity of carefully writing these memoranda in a legible manner.

"2. In the case of trials forwarded to the High Court, in which, from any cause, the memoranda in question have been indistinctly or illegibly recorded, *copies* of such memoranda should be submitted with the record of the case."—(*C. O.*, 1862, *No.* 2, *August* 13*th.*)

Particulars for identifying persons examined as witnesses.

The High Court are pleased to direct that all magisterial officers subordinate to them shall, in the examination of prosecutors, witnesses, and prisoners, continue to record in each deposition, statement, or defence the following particulars, which are indispensably necessary for the future identification of the parties examined, viz. the name of the person examined, the name of his or her father; and if a married woman, the name of her husband; the religion, caste, profession, and age of the party or witness; and the village and pergunnah in which he or she resides.—(*C. O.*, 1864, *No.* 19, *September* 17*th.*)

Recording Evidence.

(*C. O.*, 1872, *No.* 4, *August* 10*th.*)

Considerable inconvenience having been felt by the Judges composing criminal benches of this court from the manner in which the record of criminal appeals and references is frequently made up in the Courts of Sessions Judges

and Magistrates, the following directions are for the future to be strictly attended to.

2. The evidence of the witnesses should in all cases be recorded on printed or lithographed forms, and care should be taken that the headings are carefully and accurately filled up. No more than one deposition should be written on each sheet; and when the evidence of a witness does not fill the whole of the paper, care should be taken to affix the signature of the Judge or Magistrate required by section 334 of the Code of Criminal Procedure exactly at the close of the writing.

3. The attestation required could be impressed at the end of a deposition by a stamp, which would be, for obvious reasons, a better plan than affixing it as a label by means of gum or paste.

4. The Court also desire that all documents referred to by the Sessions Judge, and used by him as evidence (such as medical depositions, confessions of accused, &c., &c.), should be put up with the Sessions nuthee. Considerable inconvenience, as well as delay, is caused by the appellate court having frequently to search through the Magistrate's proceedings for papers which ought to form part of the Sessions record. Copies can, if necessary, be placed in the Magistrate's record.

5. When confessions of accused persons made before a Magistrate form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out. The Court has frequently to notice the great difficulty experienced in the reading of the vernacular papers of the local courts by persons unaccustomed to the peculiarities of the writing and local idiom.

Examination of Witnesses.

As regards the examination of complainants, witnesses, or persons accused of the commission of any offence, under inquiry or trial before a criminal court, the following rules should be strictly observed in every case by Sessions Judges and Magistrates of every grade.

Rules.

Every witness shall be examined *vivâ voce* in open court in the presence of the Judge [or Magistrate.]

A Judge [or Magistrate] shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

If, after the examination of a witness has commenced, the Judge [or Magistrate] be compelled to attend to any other business, the examination of the witness shall be suspended as long as such other business is being attended to.

The examination of a witness shall not be interrupted for the purpose of enabling the Judge [or Magistrate] to attend to other business, unless such business be of an urgent nature.

An adjournment of the hearing of the case shall not be ordered except for the absence of a witness or any other reasonable cause. In such a case a written order signed by the Magistrate shall be recorded, stating the reason for this adjournment, and the date to which the hearing is adjourned.

When it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible, and no person accused of any offence shall be remanded for any period exceeding fifteen days (sec. 194).

Every Sessions Judge and Magistrate shall sit daily and punctually at the hour appointed for the opening of his court, unless prevented by circumstances, which are to be recorded in the proceedings of the court.—(*Extract from C. O.*, 1864, *No.* 6, *May* 16*th.*)

Prompt Examination of Witnesses after their Appearance.

The Court having recently [1865] found from an explanation furnished by a Magistrate that witnesses are not invariably examined and discharged on their attendance before criminal courts, but are sometimes temporarily discharged without any examination, being bound over to appear again on another day, think it their duty to notify to all Magistrates their severe condemnation of such irregular proceedings.

2. The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If from unavoidable causes an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner.

3. The practice which the High Court have found to exist in the court of one Magistrate is not, it is believed, prevalent; but if, contrary to the Court's expectations, it should exist anywhere, it must be forthwith discontinued, inasmuch as it is not only contrary to the spirit of the Criminal Procedure Code, but is calculated only to deceive the superior authorities by placing before them fictitious returns of the punctual and regular examination and discharge of witnesses.

4. The Court expect that the Chief Magistrates of districts will carefully supervise the returns of their subordinates, as the Court hold them responsible for the correction of such irregularities as have now been discovered.—(*C. O.*, 1865, *No.* 12, *November 27th.*)

Daily Register of Attendance of Witnesses.

(*C. O.*, 1845, *No.* 194, *January 22nd, L. and W. P.*)

The Sudder Court have reason to apprehend that witnesses in general are required to be in attendance for a much longer period than is either desirable or requisite. Their detention arises sometimes from the postponement of their examination for some days after their arrival in the Magistrate's court, and sometimes from the omission of the Magistrate to peruse the depositions as soon as they are recorded by the mohurirs, or from his neglecting, in heavy and complicated cases, to examine the witnesses on points which may appear to have been insufficiently elucidated. But to whatever cause attributable, it is obvious that prolonged detention of witnesses must, in the case of indigent individuals especially, prove highly distressing, and tend in general to create a reluctance on the part of private parties to attend the criminal courts and aid by their testimony the efforts of magisterial authority for the detection of crime and of those engaged in its commission.

The adoption of a methodical plan will, the Court believe, have a beneficial effect, by directing the attention of the magisterial officers in a special manner to this part of their duties, and thus preventing the prolonged detention of witnesses, except for good and sufficient reasons. With this object the Court circulate a form of diary, which has been in actual use in the North-Western Provinces, and which the Magistrates are hereby desired to introduce in their own offices and in those of their subordinates.

The several headings of the diary are so clear that the brief directions annexed to the form will suffice to show the manner in which it should be prepared.

Diary of Witnesses in attendance in the Magistrate's Court.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Date of arrival.	Date of deposition, &c.	Date of attendance	Name.	Designation.	Case in which concerned.		Number of days detained.								Name of mohurir taking evidence.
					Plaintiff.	Defendant.	1 day.	2 days.	3 days.	4 days.	5 days.	6 days.	7 days.	More than 7 days.	

This book is always on the Magistrate's table in the cutcherry. The Nazir fills up the 1st, 4th, 5th, 6th, and 7th columns whenever a petition may be presented or a case be received from the thana; he then fills up the 16th column and delivers the case to a mohurir, and if he do not receive it back ready on the same day, reports accordingly to the Magistrate. On receiving it he fills up the 2nd column, and the Magistrate signs all the depositions, and when that officer *hears and attests* the depositions, he signs them again and causes the 3rd and corresponding columns to be immediately filled up in his own presence.

Mode of Calculating Detention of Witnesses.

(*C. O.*, 1860, *No.* 72, *February* 8*th.*)

In order to secure uniformity in the preparation of the diary of attendance of witnesses prescribed [by the above] circular order No. 194 of the 22nd January 1845, informs

criminal authorities that in calculating the number of days a witness has been detained, the day of his arrival is invariably to be included, provided he make his appearance sufficiently early to allow his evidence being recorded on that day.

Recording Evidence in Warrant Cases.—Sec. 335, Crim. Proc. Code.

No. 773, dated Calcutta, the 20th June 1874.

From—The Registrar, High Court, Calcutta,

To—The Officiating Sessions Judge of

I am directed to acknowledge the receipt of your letter No. 61S, dated 5th June 1874, forwarding a copy of correspondence between yourself and the Magistrate as to the language in which the evidence of witnesses should be recorded in warrant cases.

2. In reply I am to say that your view of the case is correct. The Government notification dated 30th June 1864, and published at page 1462 of the *Calcutta Gazette* of the 27th July 1864, notified under section 196 of the old Code of Criminal Procedure (Act XXV of 1861) "that in every district of the Lower Provinces the evidence of witnesses shall be taken down by the Magistrate with his own hand and in his own vernacular language, unless he be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open court.' It was also notified "that if the vernacular language of any Magistrate be neither English nor the language of the district in which his court is held, he may take down the evidence in English, or in the language of the district, instead of in his own vernacular."

3. Section 335 of the new Code of Criminal Procedure (Act X of 1872) reproduces section 196 of the old Code, and under the concluding paragraph of section 2 of the new Code the Government notification of the 30th June 1864 is as much in force as if it had been published and made under section 335 of that Code.

Copy of this letter forwarded to all Sessions Judges and Magistrates for information.—(*C. M.*, 1874, *No.* 4, *June 20th.*)

CONFESSIONS, RECORDING OF.

Section 346, *Criminal Procedure Code.*

The correspondence reproduced below is forwarded for the information and guidance of Sessions Judges and Magistrates—(*C. M.*, 1873, *No.* 7, *July* 30*th*):—

Extract, paragraphs 1, 2, *and* 3, *from a letter from the Officiating Additional Sessions Judge of*————, *No.* 162, *dated* 10*th July* 1873.

1. In all criminal cases which come before me from Native Deputy Magistrates, I find that while all the witnesses' depositions are written by the Deputy Magistrates with their own hands, directly the confession of a prisoner has to be recorded the Magistrate allows a mohurrir to write it, and contents himself with making English notes of the substance of the confession, though it is needless to remark that the importance of having an accurate record of the statement made is far the greater with respect to confessions.

2. I wrote six months ago to the Magistrate of ————on the subject a letter, a copy of which I enclose; but I do not find that any attention is paid to it, and the matter has just been prominently brought to my notice at the recent Sessions at ————, when a Deputy Magistrate admitted before me, when I examined him about a confession recorded in his presence, that he allowed the police-officer who had brought in the man to be present while the confession was recorded by a mohurrir, and to suggest questions to be put to the confessing prisoner.

3. I asked the Deputy Magistrate why he had not written the confession himself. He said that the law did not make it compulsory on him to do so.

From Registrar of the High Court of Judicature at Fort William in Bengal, to the Officiating Additional Sessions Judge of————, *No.* 1047, *dated Calcutta, the* 30*th July* 1873.

I am directed to acknowledge the receipt of your letter No. 162, dated 10th instant, in which you suggest the issue of instructions with a view to secure the recording of confessions by Magistrates with their own hands.

2. I am to observe in reply that the Courts are unable to take away by order a discretion which the law (sec. 346, Criminal Procedure Code,) allows a Magistrate, for this matter does not come within section 335. But they agree with you that it is not proper to allow the police-officer who brought the prisoner to be present while the confession is being recorded by a mohurrir, and to suggest questions to be put to the confessing prisoner. The Court would not be much inclined to attach weight to a confession obtained under such circumstances, though the confession might be admissible; but the course taken suggests that the Deputy Magistrate was not really conducting the inquiry himself.

SUMMONSES ON MEDICAL SUBORDINATES OF DISTRICT TO BE SERVED THROUGH DISTRICT MAGISTRATE AND INTIMATED TO CIVIL SURGEON.

Section 351, *Criminal Procedure Code.*

Considerable inconvenience having been experienced in consequence of sub-assistant surgeons or native doctors at sub-divisions being summoned from their stations without the knowledge of the Civil Surgeon of the district to whom they are subordinate, for the purpose of giving evidence in cases in which they have held *post-mortem* examinations, or when their attendance may be otherwise required by the judicial authorities, the High Court are pleased to direct that in future all summonses on these medical subordinates be served through the Magistrate or other executive head of the district to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during their absence.—(*C. O.*, 1868, *No.* 1, *January* 10*th.*)

SUMMONSES ON POLICE-OFFICERS TO BE SERVED THROUGH DISTRICT SUPERINTENDENT OR ASSISTANT SUPERINTENDENT.

Section 351, *Criminal Procedure Code.*

As there is reason to believe that public inconvenience has frequently been caused by the practice, said to prevail [1866] in several districts, of summoning police-officers as witnesses without reference to their immediate superiors, the Court are pleased to direct that whenever a summons to appear as a witness in a criminal case is issued to an officer of police, it be served upon such officer through the

Superintendent of the district or the assistant in charge of the sub-division to which he may belong.—(*C. O.*, 1866, *No.* 14, *December 6th.*)

Witnesses arrested under a Warrant to be treated as Persons under Civil Process.

Sections 352, 355, *Criminal Procedure Code.*

A case having been recently [1864] brought to the notice of the Officiating Chief Justice, in which a person who should have been simply summoned as a witness, had, without any sufficient cause, been arrested under a warrant issued by a Justice of the Peace under the provision of section 188 [now 352], Code of Criminal Procedure, and who, after his arrest, had been put in irons, it appears to His Lordship desirable to call your attention to the necessity of stating, as shortly as possible, in every warrant, the special matter on which it proceeds.

[After stating the law and citing the sections of the old Code of Criminal Procedure.]

Witnesses brought up under the 188th [now 352] and 191st [now 355] sections should not be treated as criminals and put in irons, but simply as persons arrested on civil process.—(*C. O.*, 1864, *No.* 21, *November 22nd.*)

Recognizances.

Sections 391, 396, 397, *Criminal Procedure Code.*

It has been recently brought to the Court's notice that considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of recognizances from accused persons and their sureties, and that the result of the diversity and irregularity is not only to cause police-officers to be employed in needless inquiries, but also to keep the accused person in custody, pending the result of the inquiry into the sufficiency or otherwise of the bail offered: the attention of the criminal authorities is therefore directed to section 391 of the Code of Criminal Procedure, which simply requires the Magistrate to take a recognizance, *in such a sum of money* as he may think sufficient, from the accused and one or more sureties; and to sections 396 and 397, which lay down the proceedings to be adopted to compel payment of the penalty mentioned in the recognizance from the person executing the personal recognizances, and from his sureties. At the same time, however, it is the duty

of the Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond.—(*C. O.*, 1864, *No.* 15, *August* 11*th.*)

FINDING IN CASE OF ACQUITTAL ON GROUND OF BEING LUNATIC.

Section 429, *Criminal Procedure Code.*

In continuation of their circular No. 14, dated 5th August [reproduced below], the Court request the particular attention of all Sessions Judges to the terms of section 429, Code of Criminal Procedure, in all cases falling under it.

2. It will be observed that it is necessary that the finding should state specially whether the accused committed the act charged or not; if he be acquitted on the ground that, at the time at which he is charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law. In some instances the Judges have found the prisoner *guilty* of the offence charged, and then acquitted him on the ground of insanity, thus including two opposite verdicts in one and the same finding,—a contradiction caused entirely by a want of attention to the words of the law.—(*C. O.*, 1864, *No.* 22, *December* 10*th.*)

The circular above referred to is reproduced here for convenient reference; the references are to the old Code of Procedure.

Circular No. 14, dated Calcutta, the 5th August 1864.

From—The Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—All Criminal Authorities in the Regulation and Non-Regulation Districts.

A case having been recently brought to the notice of the High Court, in which the course to be pursued in case of an accused person being a lunatic was entirely misapprehended by the district criminal authorities, the Court are pleased to draw the attention of the criminal authorities subordinate to them to the provisions of sections 388 to 394 of the Code of Criminal Procedure. The rules embodied in those sections are as follow:—

1. If a person charged with an offence appear to be of unsound mind and incapable of making a defence when brought before a Magistrate, that officer, after ascertaining the *primâ facie* truth of the charge, and making the inquiries prescribed in section 388 of the Criminal Procedure Code regarding the state of mind of the accused, if he consider the person to be of unsound mind, is to stay all further proceedings.

2. If the offence with which the party is charged, and of the truth of which there is *primâ facie* proof, be bailable, the Magistrate may release the party on sufficient security being given that he shall be properly taken care of, prevented doing injury to himself or others, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused must be kept in safe custody in such place as the Local Government shall direct.—(Sec. 390, C. C. P.)

3. The Magistrate may at any time, if he has reason for believing that the person is of sound mind, resume the investigation; but if the accused person, when again brought before the Magistrate, shall still appear to be of unsound mind and incapable of making a defence, the Magistrate shall act as provided by sections 388 and 390; the course taken under section 390 following, as a necessary consequence, the inquiry held under section 388 (392).

4. If the party accused, when brought before the Magistrate, is in a fit state to make his defence, the Magistrate should proceed with the investigation; and if the offence be one *triable* by a Magistrate, he should complete the trial, and if he determines that the offence charged was committed by the accused in a sound state of mind, he should pass sentence on him according to law: but if the accused should be acquitted on the grounds that at the time he committed the act, which but for the incapacity found would have been an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the Magistrate should retain him in safe custody till the orders of the Local Government be received for his removal to, and detention in, a lunatic asylum or other suitable place.

5. If the offence with which the accused party is charged *be not triable* by the Magistrate, he must, if the party be in a fit state of mind to make a defence, complete his investigation; and if he find the charge proven against the prisoner, should commit him for trial, in order that if it be shown on the trial that the offence was committed when the prisoner, by reason of unsoundness of mind, was incapable of knowing that he was doing what was wrong, or prohibited by law, he may be acquitted by the Court, which alone has authority to try him. The Sessions Court will proceed to deal with the prisoner in exactly the same mode as the Magistrate has been directed to deal with him in the 4th paragraph of this communication, according as he may find that the offence of which the prisoner was charged was committed by him in a sound or an unsound state of mind.

6. If in the course of the trial the prisoner appear to be of unsound mind, the Sessions Judge must suspend proceedings and follow the course prescribed by section 389.

7. If the party being of sound mind when put on his trial is found, although of sound mind at the time, not to be guilty of the offence wherewith he stands charged, and is acquitted on that ground, he must be discharged as any other person legally acquitted.

8. Under no circumstances should a party accused of an offence, being at the time of unsound mind and incapable of making a defence, be examined by a Magistrate or committed for trial.

A case having occurred in which a prisoner committed suicide after being transferred from the lunatic asylum to the custody of the Magistrate for the purpose of standing his trial, the Court direct that you will be so good as to make arrangements for the early trial in future of prisoners who, after being confined in such an asylum, are reported of sound mind and capable of making their defence.—(*C. O.*, 1864, *No.* 9, *June* 30*th.*)

Charge of Perjury.

Section 440, *Criminal Procedure Code.*

The Court are pleased to direct that in commitments for giving false evidence, under sections 193, 194, and 195 of the Indian Penal Code, the committing officer shall invariably insert in the charge the particular statements on which perjury is assigned. By this method of procedure alone can the accused fully understand the offence with which he stands charged, and be enabled to meet the charge brought against him.—(*C. O.*, 1866, *No.* 3, *February* 9*th.*)

Recording Sentences.

Sections 461–464, *Criminal Procedure Code.*

The High Court are pleased to circulate for adoption the following rules which lay down the method in which sentences should be recorded:—

* * * * *

3*rd.*—If a portion of the facts in evidence constitute *one* offence, and another and *distinct* portion constitute a *second separate and distinct offence*, under the Penal Code, a verdict on each charge should be entered up, and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence: the second sentence to commence on the expiry of the first. The Code of Criminal Procedure does not recognize concurrent or cumulative sentences.

4*th.*—Such, for instance, would be the course to be pursued when there is a conviction for rape and assault, or subsequent imprisonment, or for forgery of a bill of exchange, and for subsequent perjury in swearing in a court of justice that it is a genuine document.—(*C. O.*, 1864, *No.* 16, *August* 20*th.*)

Register of Convictions of Heinous Offences.

Sections 461-464, *Criminal Procedure Code; Section* 75, *Penal Code; and Section* 4, *Whipping Act* (*second convictions*).

1 Offences relating to coin and Government stamps (Chapter XII, P C)
2 Offences against property (Chapter XVII, P C)
3 Giving or fabricating false evidence (secs 193 to 195, P C).
4 Falsely charging any person with having committed an unnatural offence (secs 211 and 377 P C)
5 Assaulting or using criminal force to any woman with intent to outrage her modesty (sec 354, P C)
6 Rape (sec 375, P. C)
7 Unnatural offences (sec 377, P C).
8 Forgery (secs 465, 466, 467, 468, 469, P C).
9 Culpable homicide (sec. 304)
10 Causing grievous hurt (secs 323 and 326, and 329, 331, 333, 335, 338)

For the purpose of enabling Magistrates to ascertain whether parties charged before them with heinous offences have been previously convicted of any of the offences for which enhancement of punishment is provided on a second or subsequent conviction by section 75, Act XLV of 1860 [Penal Code], and section 4, Act VI of 1864 [Whipping Act], and for purposes of general statistical information, the High Court are pleased to direct that registers be opened in Magistrates' offices in the form appended to this circular. These registers should contain the names of parties convicted of any of the crimes specified in the margin, and should be in the language and character in use in the District Courts, varying according to the vernacular of the district.

2. Every conviction, as sentence is passed, must be entered in the office of the Magistrate of the district by the officer whose duty it is to keep the *Register of Convictions*. In cases committed to the Sessions, the entry will be made on sentence being passed by the Sessions Judge. If a prisoner be released on appeal, whether by the Judge or by the Magistrate, a note should be made in the column of remarks of the date and purport of the order of the Appellate Court.

3. Similar registers should be kept up in the same manner by sub-divisional officers regarding the offences specified which may have been committed within their respective jurisdictions, and for which any persons may have been convicted. These officers should report to the Magistrates the entries of the past month regularly at the commencement of each successive month for incorporation in the general district register.

4. To ensure the proper preparation and keeping up of the register, the Magistrate or other magisterial authority in charge shall require the officer whose duty it is to prepare it to bring the register for his inspection and signature at least once every week.

5. At the close of the year an alphabetical register of the parties convicted within the 12 months should be made for facility of reference; and at the close of every fifth year, an alphabetical register should be prepared from the alphabetical registers of the previous five years.

6. When a prisoner has been convicted more than once, a note to that effect should be made against his name in the register opened for that purpose.

7. For the purpose of giving the foregoing rules retrospective effect, an alphabetical register should be at once prepared in the form prescribed in this circular order of parties convicted since the date on which the Penal Code came into force, *i.e.* from the 1st January 1862 to the end of 1864, the requisite information being derived from the Register of Convictions in the charge of the record-keeper and of the jailor.—(*C. O.*, 1865, *No.* 5, *5th July.*)

Name of the prisoner (including his *alias*, if any).	Name of his father.	Residence.	Profession or trade.	Caste	Age or supposed age.	Height.	Personal marks, such as squint, lameness, loss of limb, permanent scars, &c	Of what offence convicted	Date of conviction.	Sentence passed.	Previous conviction	Remarks

At the instance of His Honor the Lieutenant Governor,* the Court is pleased to call the attention of District Magistrates to the instructions contained in circular order No. 5, dated the 5th July 1865, regarding the maintenance of a "Register of criminals convicted of heinous offences" with a view to a strict observance of those instructions in future, there being reason to believe that they have not been uniformly observed, and that injury to the public service has arisen from such omission.—(*C. M.*, 1875, *No.* 1, *March* 1*st.*)

* Government letter No 470, dated the 2nd February 1875.

Conviction of any Military Employé to be intimated to Military Department.

In accordance with the wishes of His Excellency the Governor-General of India in Council, the High Court directs that Judicial Commissioners, District Judges, and Magistrates, will forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the Government of India in that Department are convicted in a Criminal Court.—(*C. O.*, 1871, *No.* 6, *July* 17*th.*)

Prosecutions of Public Servants.

Section 466, *Criminal Procedure Code.*

The Court is pleased to issue the following instruction for the information and guidance of all criminal authorities subordinate to it. The charges which, under section 466 of the Code of Criminal Procedure, cannot be entertained against the officers therein described, except under the sanction or direction of the Local Government or other competent authority, relate to offences which can be committed by public servants *as such*, and which are specified in Chapter IX of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant are not necessarily committed by him *as such public servant*, in the sense in which those words are used in the Penal Code, and unless committed in that character, must be regarded as the acts of *individuals in their private capacity*. Charges, therefore, founded on such acts do not need the sanction of Government or other competent authority aforementioned before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.—(*C. O.*, 1864, *No.* 20, *October* 4*th.*)

Security for Good Behaviour.

Sections 507-512, *Criminal Procedure Code.*

No. 980, dated Calcutta, the 15th July 1873.

From—The Registrar of the High Court,
To—The Sessions Judge of

I am directed to acknowledge the receipt of your predecessor's letter No. 23, dated 14th ultimo, forwarding for approval a sample form of order to be issued by the Sessions Court for the custody of persons required to furnish security for good behaviour, whose cases are submitted to that Court under section 507, Criminal Procedure Code.

2. I am to observe in reply that, for the reasons stated below, the warrant of imprisonment in such cases should be that of the Magistrate, and not of the Court of Session.

3. It seems to the Court that under sections 507, 508, and 510, the Court of Session has (1) to consider whether

security ought to be required, and for what period, and therefore to confirm, modify, or annul the order of the Magistrate made under section 506; and next, whether, in the event of the person failing to give security, he should suffer simple or rigorous imprisonment. The Judge has then to signify his decision to the Magistrate, who, if the security is not furnished, should proceed to issue his own warrant, setting out the order of the Court of Session, as would be necessary to regulate action under sections 511 and 515.

4. The law directs (sec. 510) that imprisonment shall follow on failure to give the security, and this can be most conveniently ascertained by the Magistrate after the order of the Court of Session has been made. The order of the Court of Session is in fact not an original order of that Court, but a further order on that of the Magistrate, which the Magistrate has to carry out.—(*C. M.*, 1873, *No.* 6, *July* 15*th.*)

Possessory Award under Section 530, Criminal Procedure Code.

Circular No. 10, *dated Calcutta,* 16*th April* 1863.

Forwards, for information and guidance, a copy of a letter, No. 420, from the Registrar of the High Court of Judicature at Fort William in Bengal, to the Magistrate of Sylhet, dated Calcutta, the 16th April 1863.

Having laid before the Court your letter No. 213, dated the 3rd instant, in which you request an expression of their opinion as to whether possession can be given under section 318 [now sec. 530] of the Code of Criminal Procedure to the claimant of a share in the jumma of an *ijmalee* property, I am directed to state that as the dispute is for the right to receive rent in a certain proportion, and not for possession of land or the produce thereof, section 318 [now sec. 530, Act X of 1872] of Act XXV of 1861 is no more applicable to the case you mention than Act IV of 1840 would have been were it still in force. The proper procedure is that pointed out by section 26 of Regulation V of 1812, as modified by Regulation V of 1827, and steps to enforce that procedure should be adopted.

2. I am to remind you that any reference you have to make to the Court should be addressed through the Judge of the district.

CIRCULARS ON THE PENAL CODE.

Prosecutions for False Charges.

Section 211, *Penal Code.*

The Court having reason to believe that there is [1863] some considerable misapprehension among officers by whom the criminal law is administered as to the liability of a party preferring a false charge of an offence within the terms of section 211 of the Penal Code when the charge is dismissed *before* the "accused person" is put on his defence, the following instructions are circulated for general information.

2. The person accused of making a false charge should not be put upon his defence *before a primâ facie* case is made out against him.

3. It is not necessary, however, that the person whom he accused should have been put upon his defence.

4. A person may, for instance, be accused of murder, or of any of the offences punishable under section 377 of the Penal Code: the case may entirely break down, and the Magistrate may refuse to issue a warrant, or he may dismiss the complaint. The complainant in such a case would, if the accused were to prosecute him for instituting a false charge, and to establish against him the "intent to cause injury, knowing that there was no just or lawful ground for such complaint," be liable to the penalty prescribed by section 211 of the Penal Code.

5. There is, however, a wide distinction between the procedure necessary when a person is charged with an offence and that laid down under section 209 of the Code of Criminal Procedure, which it would be well to note. Under the latter section the complainant might, by the order of dismissal, if his complaint were "frivolous and vexatious," be ordered to pay to the person against whom the charge was brought such amends, not exceeding 50 Rupees, as the Magistrate might consider just and reasonable; but it would be necessary, in order to make him liable to the penalty incurred under section 211 of the Penal Code for a false complaint, to hold a regular trial.

6. A Magistrate might indeed, in the case last adverted to, proceed of his own motion under the Code of Criminal Procedure without any complaint from the party aggrieved; but he would still be under the necessity of holding a trial, and, in the case of "a false charge of an offence punishable with death, transportation for life, or imprisonment for 7 years or upwards," of making a commitment to the Court of Session. He would not, of course, proceed under section 68 of the Code of Criminal Procedure and take action of his own motion, unless he were perfectly satisfied that an offence under section 211 of the Penal Code had been committed. In ordinary cases he would leave the person falsely accused to prefer a complaint; and such complaint could not be entertained without the sanction required by section 169 of the Code of Criminal Procedure. Such sanction, though it may be accorded "at any time," should not ordinarily be granted until the proceedings based on the false complaint have been concluded in favour of the "accused person."

7. Further, it should be borne in mind that a complainant is not liable to punishment under section 211 of the Penal Code in *all* cases in which the prosecution fails, or in which the "accused person" is acquitted. *That* section is applicable to those cases only in which the charge is "*falsely*" *made* "*with intent to cause injury, and with the knowledge that there is no just or lawful ground for such charge.*" Want of reasonable or probable cause may raise a presumption of such knowledge and intent; but a mere failure to obtain a conviction would not of itself be sufficient to warrant the presumption.—(*C. O.*, 1863, *No.* 19, *July* 21*st.*)

In Convictions of Culpable Homicide, exceptions under Section 300, Penal Code, to be specifically noted.

The Court are pleased to adopt the following circular issued on the 20th December last by the Western Court:—

"The Court are pleased to direct that the Sessions Judges, in all cases in which they may convict of culpable homicide not amounting to murder, shall invariably mention, in their remarks on the trial, within which of the exceptions noted under section 300 of the Indian Penal Code the culpable homicide was held to come, so as not to amount to murder."

* *Penalty*—Transportation for life, or imprisonment of either description for a term which may extend to 10 years and fine
† *Penalty*.—Imprisonment of either description for a term which - - xtend to 10 or fine, or

"*Culpable Homicide not amounting to Murder.*—In reference to the distinctive penal provisions contained in section 304, as noted marginally, Sessions Judges will invariably record their opinion whether the act by which the death was caused was done with the intention of causing death,* or of causing such bodily injury as was likely to cause death;* or with the knowledge that it was likely to cause death, but without any intention to cause death, or to cause such bodily injury as was likely to cause death."†—(*C. O.* 1863, *No.* 5, *February* 5*th.*)

Hurt, Grievous Hurt, Culpable Homicide.—Sections 323, 325, 302, *Penal Code.*

It having been brought to the notice of the High Court that several cases have recently occurred in which Magistrates have disposed of cases as coming under section 325 or 323 of the Penal Code when death has resulted from the injuries inflicted, in some of which, in the opinion of the Court, the parties ought to have been punished for culpable homicide or murder, the Court desire to observe that, in cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge, and convict them of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the sessions for murder, or culpable homicide not amounting to murder.—(*C. O.*, 1869, *No.* 9, *September* 6*th.*)

THE WHIPPING ACT.

(*Act VI of* 1864.)

General Instructions.

C. O., 1864, *No.* 2, *April* 8*th.*

The High Court deem it necessary to call the especial attention of all criminal authorities to the provisions of Act VI of 1864, which has recently been passed by the Governor-General of India in Council, and received the assent of His Excellency the Governor-General on the 18th February last.

2. Section 1 directs that in addition to the punishments described in section 53 of the Penal Code offenders are also liable to whipping under the provisions of the said Code; and it has been declared, under the authority vested in the Lieutenant-Governor by section 10, that this punishment "shall, in the case of an adult," be inflicted on the breech, with a rattan* not exceeding half an inch in diameter. The Government further enjoins that "on all occasions precautions should be taken to prevent the blows from falling on any other part of the person."

* Circular of the Government of Bengal to all Commissioners, No. 13 29, dated 29th February 1864.

3. Particular care should be taken in marking the distinction between sections 2, 3, and 4. By section 2 it is enacted that for certain specified offences whipping may be administered *in lieu* of any punishment to which the convict may, for any of those offences, be liable under the Indian Penal Code; whereas by section 3 it is enacted that if he has been previously convicted under the Penal Code of any of those offences, and shall again be convicted of the *same* offence, he may be punished with whipping *in lieu* of, or *in addition* to, any other punishment to which he may for such offence be liable under that Code.

4. By section 4, however, it is enacted that, whoever having been *previously* convicted of any of the offences specified in this section of the Act shall be *again* convicted of the *same* offence, may be punished with whipping *in addition* to any other punishment to which he may be liable under the Indian Penal Code.

5. The punishment of whipping under section 2 can be imposed only on conviction of any of the offences therein specified, if the offence have been committed subsequently to the 18th February 1864, the date on which Act VI of 1864 became law.

6 It should be remarked that under sections 3 and 4, both the convictions must be for the *same* offence, which must be one of the offences specified in sections 2 and 4 respectively, in order to render the offender liable to whipping in lieu of, or in addition to, any other punishment; and that under section 4 the punishment of whipping *cannot* be inflicted in lieu of any other punishment, but may be inflicted only in *addition* to such punishment. Sessions Judges should bear in mind that under section 7 no person who may be sentenced to death or to transportation, or to penal servitude, or to imprisonment *for more than five years*, can be punished with whipping

7. Section 5 provides for the whipping of juvenile offenders convicted of any offence which is not punishable by the Indian Penal Code with death. It should be observed that the punishment of whipping must in such case be administered only *in lieu of* any other punishment; that it may be inflicted for a first or any other offence, but that, as remarked in para. 5, with reference to offences falling under section 2, the offence must have been committed subsequently to the 18th February last, the date of the passing of Act VI of 1864. The whipping of juveniles, as is by section 10 declared, shall be "inflicted in the way of school discipline, with a light rattan."

8. Section 6 provides for exceptional cases not of general application.

9. Under section 7 no female can be punished with whipping. The latter part of this section, which would apply only to Sessions Judges, has already been noticed.

10. Section 8 declares that no officer under the grade of a Subordinate Magistrate of 1st class shall pass a sentence of whipping unless he shall have been expressly empowered by the Local Government to pass such a sentence.

11. Under section 9, in cases in which a sentence of whipping is passed under sections 3 and 4 in *addition to imprisonment*, if the sentence be open to revision by appeal to a Superior Court, it must not be inflicted until 15 days from the date of such sentence, or, if the appeal be preferred within that time, until the sentence be confirmed by the Superior Court; but if no appeal be preferred, it should be inflicted immediately on the expiry of the 15 days, or, in the case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the 15 days.

12. With reference to section 9 of Act VI of 1864, the Court deem it expedient to point out that all sentences of whipping are appealable in the manner prescribed in sections 408, 409, 412 of the Code of Criminal Procedure.

13. It has been already pointed out that the Lieutenant-Governor has, under the power vested in him by section 10, declared that the rattan not exceeding half an inch in diameter shall be employed in the whipping of adults, and that the punishment shall be inflicted on the breech. It therefore only remains to remark that the maximum of punishment is 30 stripes; that the whipping must be inflicted

in the presence of a Justice of the Peace or a Magistrate of any grade; and that, unless the Court shall otherwise order, a medical officer must always be present.

14. In connection with this last provision of the law, the Court would remind all officers that the Governor-General in Council considers that the precaution of having a medical officer present at the time of the infliction of the punishment should be observed in every instance when practicable.

15. Particular attention should be directed to section 11, which prohibits the execution of a sentence of whipping when the offender is not in a fit state of health to undergo that punishment, or the infliction of whipping by instalments.

16. Section 12, prescribes the procedure in cases in which *no part* of a sentence of whipping has been carried into execution for any of the reasons specified in section 11.

17. The Court expect that great care and proper moderation will be exhibited by all officers in exercising the powers vested in them by Act VI of 1864, and that after this full explanation of its provisions no irregularities will occur in carrying them into practice.

[NOTE —*Sections* 310 *to* 313 *of Act X of* 1872 *must be read with this C. O.*]

In a recent case [1868] certain questions as to sentences of whipping, and the maximum of punishment which can be awarded under section 46 of the Code of Criminal Procedure, were referred to a Full Bench of this Court for determination.

The attention of all officers entrusted with the administration of criminal justice is called to two points which have been decided by the majority of the Judges composing the Full Bench Court.

It has been decided—

I.—That when a person who has not been "previously convicted" (using the term in the sense in which it is used in sec. 4, Act VI of 1864,) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of these offences *in addition* to imprisonment or fine for the other or others; but that it is not illegal to sentence him to *one whipping in lieu of all other punishment.*

II.—That when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only *one* whipping, *in addition to* any other punishment to which, under section 314 of the Code of Criminal Procedure, he may be liable.

The Court take this opportunity of impressing upon all officers vested with power to pass sentences of whipping that such sentences should be passed with the utmost caution and with due deliberation; and that if any doubt is felt either as to the legality or propriety (in any particular case) of passing a sentence of whipping, such a sentence ought not to be passed.—(*C. O.*, 1868, *No.* 2, *April* 6*th.*)

PROCESSES.

Fees for Processes (Magistrates' Courts).

Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Clause II, Section 20 *of the Court Fees' Act*, 1870, *declaring the* FEES *chargeable for Service and Execution of the several* PROCESSES *in the Courts of* MAGISTRATES.

I.—The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, viz.—

			Rs	A.	P.
(1)	Warrant of arrest (see note at foot of rule) ...	For the warrant in respect of one person	1	0	0
		In respect of every additional person named therein	0	4	0
(2)	Summons	For the summons in respect of one person, or of the first two persons residing in the same place . .	0	8	0
		In respect of every additional person named therein .	0	4	0

[Rule I, clauses 1 and 2, prescribes the fees leviable upon warrants of arrest and summonses. The process is one, whether one or more persons be named therein, and whether such persons reside in one place or not, but an additional fee of 4 annas is chargeable in respect of every person exceeding one named in a warrant, and an additional fee of 4 annas is chargeable in respect of every additional person, not being the second person of more than two residing in the same village, named in a summons. Thus, if the summons include one person

residing in village A and a second person residing in village B, the additional fee is chargeable in respect of such second person.—(*C. O.*, 1874, *No.* 13, *May 12th, Civil.*)]

			Rs.	A.	P.
(3)	Proclamation for absconding party under section 171, C. Cr. Procedure.	For the proclamation ...	2	0	0
(4)	Proclamation for witness not attending, section 353.	For the proclamation ...	1	0	0
(5)	Warrant of attachment	For the warrant	1	0	0
		Where it is necessary to place officers in charge of property attached, for each officer so employed per diem ...	0	4	0
(6)	Warrant of levy of fine or of maintenance to wife, children, &c.	For the warrant	1	0	0
		and a percentage on the amount of fine or maintenance levied, viz. 2 per cent. on sums not exceeding Rs. 100, and where the sum exceeds Rs. 100, then 2 per cent. on Rs. 100, and 1 per cent. on the amount of excess.			
(7)	Written order	For the order	1	0	0
(8)	Injunction	For the injunction	1	0	0
(9)	Notice	For the notice	1	0	0

[Magistrates may follow the principle of rule III of the rules under clause 1, section 20 for the civil courts in realizing court fees in criminal courts.—(*C. O.*, 1874, *No.* 13, *May 12th, Civil.*)

Rule III.—No process which comes within the operation of rule I shall be drawn up for service or execution except upon an application made to the court for that purpose in writing, on a document bearing upon its face stamps not less in amount than the fee which by rule I is directed to be charged for serving and executing the process so sought to be drawn up. This application may, however, at the option of the party making it, be included in the petition by which he moves the court to order the process to issue; but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps, if any, as are needed for its own validity: and in either case the filing of the application thus duly stamped shall constitute payment of the fee chargeable for the process

[The charge for boat-hire, when it has to be incurred, is not a court fee realizable by stamps. There is nothing in the rules to introduce a change in the existing practice, and the charge must be borne as heretofore by Government.—(*C. O.*, 1874, *No.* 13, *May 12th, Civil.*)]

II.—Nothing herein contained shall be deemed to authorize the levying of any fee for any summons to attend as a juror or assessor in a Court of Session, and no fee shall be chargeable on any such summons.

III.—No fee shall be chargeable in advance on any process of a criminal court in any case where the prosecution is on the part of Government; but it shall be competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused, or any of them, in like manner as if such fees had been paid by the prosecutor in the first instance.

IV.—Where any percentage is directed by these rules to be taken upon amounts levied as fines or maintenance, such percentage shall be deducted from the proceeds of any property sold, or shall be paid together with the amount levied, and with the other costs of process as stated in the warrant.

V.—When a proclamation has been issued for an absent witness, if the witness shall afterwards appear, and the court shall be of opinion that such witness had absconded or concealed himself for the purpose of avoiding the service of a warrant upon him, such court may order the witness to pay the cost of the proclamation.

VI.—In districts named in the margin, where the sub-divisional system has not been fully introduced, in every case where a process has to be executed at a distance of more than 25 miles from the court from which it is issued, an addition of one-fourth is to be made to the fee chargeable, and if more than 50 miles, an addition of one-half.

Rajshahye.	Beerbhoom.
Bogra.	Cachar
Dinagepore	Chittagong.
Maldah	Noakholly
Rungpore	Singbhoom
Bankoora.	Nowgong
Sylhet *	Lohardugga *
Hazareebagh.*	Manbhoom *

* Added by notification published with C. O, 1874, No. 20, August 13th.

Scale of Nazirs' and Peons' Pay.

Extract from Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Clause III, Section 20 of the Court Fees' Act, 1870.

The following monthly salaries shall be allowed to the peons and other officers employed in the service or execution of processes in the courts of the Magistrates:—

1*st.*—In the court of the Magistrate of the district—

	Rs.
Court inspector (or nazir) responsible for the due service and execution of all processes in the courts of the several Magistrates at the sudder station, as at present.	
Peons, each	7

2nd.—In Sub-divisional Magistrates' courts—

Court inspector (or nazir) of sub-division, as at present		Rs
Peons, each	. ...	7

Note—The rates of remuneration for peons provided by these rules are intended to secure the services of men who can read and write. But whenever, on the occurrence of a vacancy, candidates thus qualified shall not be available, the court on whose establishment the vacancy exists may record a declaration to that effect, and may then appoint temporarily some person whom it may consider competent to perform the duties, and who shall be paid at the rate of Rs 5 per mensem in Moonsiffs' courts, and Rs 6 per mensem in all other courts provided that such appointments, when made by a court subordinate to the District Judge or the Magistrate of the district, shall be subject to the approval of such Judge or Magistrate, and shall cease as soon as duly qualified candidates shall be procurable.

[The intervals and rate of increment which govern the increase of salaries of the establishment to which the officer belongs are applicable under these rules.—(*C. O.*, 1874, *No.* 13, *May* 12*th*, *Civil.*)]

District Establishment of Peons.

Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Section 22 of the Court Fees' Act, 1870.

Magistrates' Courts.

1*st.*—The Magistrate of every district shall ascertain the average number of processes issued in a year from his own court and from each of the courts subordinate thereto during three years last past.

[Clause 2, section 20 of Act VII of 1870, clearly indicates that only processes in cases of offences other than offences for which police-officers may arrest without warrant are to be served by peons employed under the Court Fees' Act.—(*C. O.*, 1874, *No* 13, *May* 12*th*, *Civil.*)]

2*nd.*—The peons to be employed in each district shall be in number sufficient for the execution of a like number of processes, each peon being for this purpose considered capable of executing 300 processes per annum.

3*rd.*—In the districts named in the margin, where the peons entrusted with a large proportion of processes have to be conveyed by boat, the number of processes which each peon is expected to serve may be reduced by one-third, and the number of peons to be employed shall be calculated accordingly.

Backergunge	Luckimpore
Dacca	Chittagong.
Jessore	Dinagepore
Sylhet	Mymensingh
Kamroop	Rajshahye
Nowgong	Rungpore.

N B—For the districts in the second column the calculation is to be made from May to October inclusive only

4th.—Where it appears advisable to the Magistrate of the district, he may authorize the appointment of such number of peons on the whole for all the courts in his district as may suffice for executing the total number of processes of those courts, and may from time to time apportion such peons according to need among such courts.

5th.—When it appears to the District Magistrate that the number of processes issued out of any court or courts in the district has increased by 10 per cent., he shall be competent to make a corresponding increase in the number of peons; and if there shall be a diminution to the like extent, or if he should be satisfied that the processes of all or any of such courts can be executed by a smaller number of peons, it shall be his duty to make a reduction accordingly.

Processes in other jurisdictions to be easily legible.

It has been brought to the notice of the Court that it frequently happens, in the case of process issued in one district for service or execution in another, that the seals and signatures on the process are illegible, whereby great inconvenience and delay are caused.

2. It is also necessary and right that in every sentence or order made by a criminal court the jurisdiction of the Judge or Magistrate making it should distinctly appear on the face thereof.

3. The Court is therefore pleased to direct that in every process and every sentence or order (of whatever description) issued by a judicial officer, for whatever purpose it may be issued or made, the name of the district and of the court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such manner that it may be easily read.

4 The Court further directs generally that in all cases all judicial officers shall take care to sign their names distinctly and legibly.—(*C.O.*, 1876, *No.* 4, *March* 13*th.*)

Processes in other jurisdiction with different language to be accompanied by translation into that language or into English.

Inconvenience having resulted in certain cases from processes sent fron Bengal to Courts in the Madras Presidency being in Hindoostanee, the Court are pleased, at the

instance of His Honor the Lieutenant-Governor, to issue the following orders on the subject.

2. Warrants issuing out of a Magistrate's Court should be written "in the language in ordinary use in the district in which it is held," that is to say (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a district where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language, or into English. Moreover, in such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution.—(*C. O.*, 1872, *No.* 3, *July 25th.*)

Holidays how far available for Criminal Courts.

Dusserah Vacation.

Several of the Zillah Judges appear to have entirely closed their Courts on the criminal as well as on the civil side for the period of the Dusserah vacation, and to have abstained during the whole of that period from attending to business, receiving or opening communications from the Superior Court, dispatching returns which were due, or doing any act whatever of an official kind.

Such a practice is justified by nothing in the law or in the orders of this Court: it causes great inconvenience. The Zillah Judges are therefore reminded that, under the circular order (Nizamut Adawlut) No. 8, dated 23rd March 1838, issued under the orders of Government, which has never been rescinded, the Court of Session "must never be closed for the dispatch of criminal business except on those days only when a total cessation from all business is necessary and usual;" and moreover that even on the civil side of their Courts it does not follow that because there is no sitting of the Court, therefore every official duty is to be suspended.—(*C. O.*, 1868, *No.* 4, *April 2nd, Civil.*)

Circular order No. 8, *of* 23*rd March* 1838, transmits, for information and guidance, the subjoined copy of a letter from the Officiating Secretary to the Right Hon'ble the Governor-General to the Registrar of the Sudder Dewany and Nizamut Adawlut of the Western Provinces, and requests that Judges will strictly attend to the orders therein contained.

"With reference to the correspondence noted in the margin, copies of which are annexed for the information of the Court, I am directed by the Right Hon'ble the Governor-General to request that they will explain to the several Judges subject to their authority that during the Dusserah and Mohurrum vacations their Court must never be closed for the dispatch of criminal business, except on those days only when a total cessation from all business is necessary and usual.

"The Court are accordingly authorised to issue a circular order, directing the observance of this as a standing rule in the several subordinate Courts, and they are requested to see that it is carefully attended to on occasions like the one under notice."

Civil Court Holidays.

The High Court having observed that certain Sessions Judges close their Courts on the Civil Court holidays to the great prejudice of public business, all Sessions Judges and Magistrates in the Lower and Extra Regulation Provinces are reminded that the holidays published by the High Court are for observance in the Civil Courts only, and that the Criminal Courts, as a rule, should be closed on no days when the public treasuries are open. In any case, a trial commenced ought to be finished, although a native holiday intervenes; and Sessions ought not to be interrupted, and the commencement of trials postponed, except on days when native usage absolutely requires the intermission of all business.—(*C. O.*, 1876, *No.* 1, *February* 28*th.*)

A SESSIONS JUDGE QUITTING A DISTRICT TOWARDS THE END OF A YEAR IS REQUIRED TO RECORD HIS OPINION OF THE WORK OF HIS SUBORDINATES.

Instances being of frequent occurrence in which, owing to the removal of Sessions Judges towards the end of the year, and the unacquaintance of their successors with the circumstances of the district, reports are sent up nearly blank; Government have signified a wish that the Court "will frame some rule by which such deficiency of information may not again occur from such a cause, and require Sessions Judges, on removal from the station, to place on record their sentiments and opinions on the administration of those subordinate to them, up to the period of their quitting the office of control." The Court therefore direct that, as laid down for the civil department by paragraph 9 of Circular Order No. 28, dated Lower Provinces, 7th, and Western Provinces, 21st December 1838, the Sessions Judges will invariably, prior to delivering over charge of their offices on quitting a district, record a minute, to be made over to their

successors, containing the particulars referred to, and any other observations or results of experience they may deem necessary or useful. The above rule is also applicable to Magistrates under similar circumstances.—(*C. O.*, 1842, *No.* 103, *January* 25*th*, *W. P.*, *and May* 6*th*, 1842, *L. P.*)

MOOKHTARS, &c., TO RENEW CERTIFICATES.

The High Court deems it necessary to warn Sessions Judges and Magistrates to take care that parties holding certificates as Revenue Agents do not practise as Mookhtars without renewing their certificates in that capacity.—(*C. O.*, 1873, *No.* 8, *August* 19*th.*)

INTESTATE PROPERTY.

"Lawaris" property.

It having been brought to the notice of the Court that considerable difference of opinion and practice prevails as to the manner of disposing of "lawaris" property, they communicate the following observations on the subject

Unclaimed property not to be confounded with the property of intestates.

2. The Court observe that the difficulty appears to arise from the Magistrates confounding "unclaimed property" with the "property of persons dying intestate" (lawaris). With regard to the former, they refer the civil and criminal authorities to clause 16, section 16,* Regulation XX, 1817.

Custody and disposal of the latter.

3. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (lawaris), the Court direct me to observe that section 7, Regulation V, 1799, contains a specific provision, and declares that should no claim be preferred to it for the space of twelve months, an inventory of the property, together with a report of the circumstances of the case, shall be submitted by the Judge to the Governor-General in Council for his orders. Whenever, therefore, any property of that description may come into the hands of a Magistrate, he should forward it immediately to the Judge of the district, to be dealt with in the manner directed in the section of the Regulation above quoted.—(*C. O. No.* 3, *dated* 15*th December* 1837, *L. P.*)

Forms for future cases of both descriptions.

The Court of Nizamut Adawlut having had under their consideration the means best adapted as checks against the misappropriation of "unclaimed property" and the "property of intestates" coming under the control of the Fouzdary Courts, are pleased to prescribe the adoption of the forms annexed in all future cases of the kind.—(*C. O. No.* 151, *dated* 24*th November* 1843.)

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* Repealed by Act XVII of 1862, but re-enacted in Act V of 1861, sections 25 to 27.

FORM No. 1.

ZILLAH FOUZDARY ADAWLUT.

Register of Unclaimed Property disposable under Clause 16, *Section* 16, *Regulation XX of* 1817.—(*Now Secs.* 25–27, *Act V of* 1861.)

1	2	3	4	5	6	7	8	9	10	11	12
Names of thanas.	Description of unclaimed property.	Date of arrival at the thana.	Date of sale (if sold) in the mofussil.	Date of arrival at the sudder station.	Date of sale at the sudder station.	Price realized by the sale of the property.	Signature of the nazir.	Date on which the price realized was paid into treasury.	Receipt and signature of the treasurer.	Signature of the Magistrate or other officer.	REMARKS.
											If the property has been made over to any claimant who has appeared, it is to be stated in the column of remarks. Total amount ... 0 0 0 Realized during the month ... 0 0 0

FORM No. 2.

ZILLAH FOUZDARY ADAWLUT.

Register of Lawaris Property disposable under Section 7, *Regulation V of* 1799.

1	2	3	4	5	6	7	8	9
Names of thanas.	Names of individuals deceased.	Description of property.	Date of arrival at the thana.	Date of arrival at the sudder station.	Date of dispatch of property to the Civil Court.	Signature of the nazir.	Date of receipt given by the civil authority.	REMARKS.

The Articles of War, Nos. 102 and 103, vest the administration of the estate of any deceased officer or soldier, or person receiving public pay drawn by any officer in charge of a public department belonging to the army, in the military authorities, whenever there may be no heir or executor of the deceased on the spot at the time of decease, thereby precluding the jurisdiction of the Civil Courts in regard to the same under clause 7, section 16, Regulation III of 1803, as was notified to the civil authorities by the circular order of the Sudder Dewany Adawlut, No. 96, dated 14th June last.

Estates of deceased officers or other military men. Administration in whom vested.

Accordingly the Court are pleased to modify paragraph 3 of their circular order No. 3, dated 15th December 1837,* by directing that whenever any property of the kind described in the preceding paragraph may come into the hands of a Magistrate, he shall, instead of forwarding it, as heretofore, to the Judge of the district, communicate with the officer commanding the regiment, or in charge of the department to which the deceased belonged, and comply with the instructions which such authority may give regarding the disposal of it.—(*C. O. No.* 57, *dated* 25*th April* 1851, *W. P.*)

Course to be adopted by Magistrate.

ARRANGEMENT AND DISPOSAL OF RECORDS OF CRIMINAL CASES.
C. O., 1865, *No* 6, *July* 17*th.*

The Court having reason to believe that the terms of the late Sudder Court's circular No. 20, dated 20th August 1857, have in many cases been neglected, are pleased to call the attention of all Sessions Judges and Magistrates of districts thereto, with the view to enforcing for the future a more general observance of its requirements.

2. The circular is reproduced for easy reference.

3. If the Sessions Judges and Magistrates will from time to time visit their record-rooms (as they should), there will, the Court think, be no difficulty in obtaining a proper arrangement of all their records. The Court desire to impress seriously upon all officers the extreme importance of this work, for without a proper arrangement of its records, and a periodical clearance of all old and useless papers, the efficiency of a public office is much impaired. On the other hand, a neglect of this duty in the course of time leads to such confusion as invariably results in an application for an

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* See p. 61.

extra establishment to perform a duty which, if regularity had been enforced in the office, should have been executed without any difficulty by the establishment attached to that office. The subject has recently been brought to notice by certain applications of this nature, which the Court have with considerable reluctance been compelled to submit to Government; but after this warning, the Court wish to inform all Sessions Judges and Magistrates of districts that they expect that the necessity for applications for extra establishments will not arise, and that if any such applications are submitted the Court will be compelled to hold the individual officer personally responsible for an exepnse which must be held to have been caused solely by his carelessness and inattention to orders.

4. Mention of the state of their record-rooms should invariably be made in the criminal reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but require a clear description of the state of each record-room, and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected.

Rules in Circular 20, *dated* 20*th August* 1857, *referred to in paragraph* 2 *above.*

I.—Records of Sessions trials and heinous (*i.e.* non-bailable) cases of Magistrates' Courts generally of above 14 years' date may unobjectionably be destroyed, a discretion being exercised at the same time by the Sessions Judges and Magistrates of preserving individual cases or papers on any grounds appearing to them sufficient; cases in which sentences are not expired must invariably be preserved.

II.—Provided that cases in which parties accused have hitherto eluded apprehension shall always be preserved.

III.—The above rules should be acted on from year to year, so that no accumulation may occur beyond a term of 14 years in regard to the records of heinous (*i.e.* non-bailable) cases.

IV.—In regard to the records of the Magistrate's Court, the following may be destroyed yearly, if upwards of two years old, excepting those which the Magistrate may deem it prudent to preserve in consequence of the non-arrest of particular offenders or non-realization of fines. In

cases of the last description the records should be destroyed, at all events, after six years from the date of sentence:—

Security cases, if expired.
Petty (*i.e.* non-bailable) trials.
Act IV of 1840 (re-enacted in Chapter XL; Act X of 1872), proceedings, excepting the decisions and documents, and written statements.
Miscellaneous cases.
Thana diaries.
Police reports, in which no further proceedings followed.
Miscellaneous ruboocaroes.
Ditto reports and returns by the nazir.
Copies of perwannahs.
Ditto of ishtahars.
Dispatch books.
Receipt books of the record-room.
Rough order books.
Witnesses' attendance books.
Appeals.
Nazir's records, excepting lotbundees, accounts of money, and ferry ghât papers.
Miscellaneous reports of the jailor.
Miscellaneous petitions.
Periodical statement, except register of petty (*i.e.* non-bailable) cases.
Register of mookhtarnamahs, excepting "general" ones.
Register of miscellaneous cases.
Ditto petitions.

V.—In regard to cases appealed to the Sessions Court, the Sessions Court record of such cases may be periodically destroyed after a term of six years.

Compilation of Medico-legal Reports.

With reference to the accompanying* copy of a circular which the Inspector-General of Police has been

* With a view to facilitate the compilation and circulation, for general information, of complete medico-legal reports of the most important criminal cases, the following instructions are issued:—

On receipt of the memorandum (form No. 26) from the Court Officer, showing the result of a case in which a report has been asked for from the Civil Surgeon, the District Superintendent will communicate the final order in the case to the Civil Surgeon in as few words as possible, with a reference to the report above mentioned. Ordinarily it will be sufficient to note whether the accused has been convicted or acquitted; but in all cases where the final order appears to be opposed to the medial evidence, the Civil Surgeon should be furnished with any remarks made in the decision regarding that evidence. These remarks will be communicated to the District Superintendent by the Court Officer when reporting the result of the case.

In sessions cases the Court Inspector will obtain the necessary information through the Government Pleader (who will have access to the records), and will furnish it to the District Superintendent in the same manner as in other cases.

authorized to issue to District Superintendents, the Court, at the instance of His Honor the Lieutenant-Governor, direct all Zillah Judges and Judicial Commissioners to allow the Government Pleaders in their several districts to have access to their decisions in all criminal cases in which medical evidence is taken for the purpose indicated in the circular.

2. The intervention of the Government Pleader will, however, only be necessary in cases where for any reason it may be thought undesirable that this duty should be performed by the Court Inspector to whom it should ordinarily be entrusted.—(*C. O.*, 1869, *No.* 10, *September 22nd.*)

Rates for Copying.

Informs magisterial authorities in the Lower Provinces that the following rates of remuneration for copying documents are to be adopted for the future:—

On account of private parties.

For copying 750 English words	1 rupee.
For examining ditto ditto	8 annas.
For copying and examining 1,840 Vernacular words ...	1 rupee.

On account of Government.

For copying and examining 2,000 English words	1 rupee.
For ditto ditto 4,000 Vernacular words ...	1 „

2. Where applicable, it is not to be understood that the clerks in the Government offices are to be paid for copying on account of Government, but that the rates for Government work given above are to be in force whenever any extra copying work, which it would be impossible for the regular establishment of the offices to get through, has been sanctioned by competent authority.—(*C. O.*, 1861, *No.* 85, *August 5th.*)

Rule regarding Applications for Copies of Papers.

There being reason to believe that specifications of additional documents are sometimes inserted in applications for copies of papers, after the presentation of the application and the passing of an order for granting copies of the papers originally applied for, the Court, with a view to prevent

such a practice, direct that petitioners be in future required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers —(*C. O.*, 1843, *No.* 132, *dated 7th April, L.P.*)

Copies of Letters, &c., from the Sudder Court not to be granted by local authorities.

The Court request that whenever applications are made to the local authorities for copies of any letters from, or resolutions passed by the Court, they will refer the applications to the Court, instead of granting the copies asked for.

This rule is not to be considered to apply to the sentences of the Nizamut Adawlut in criminal trials.—(*C. O.*, *No.* 160, *dated* 19*th April* 1844, *L.P.*)

Copies of Exhibits.

A stranger to the suit has no right to obtain copies of exhibits put in evidence, except with the consent of the person by whom they were produced.—(*C. O.*, 1875, *No.* 6, *June 2nd, para.* 4, *Civil.*)

Forms prescribed for Registers.

No. 1, *Register of Criminal Complaints.*

Complaints should be received at a fixed hour each day, and should be immediately numbered in the order of their receipt. They should then be entered in a book, to be kept in the form annexed. This book should be kept under the special control of the Magistrate himself.—(*C. O.*, 1868, *No.* 5*A*, *September* 7*th.*)

Register of Criminal Complaints.

Serial No for month	Date	Name of complainant	Thana.	Offence charged, with section of Penal Code	Orders passed	Remarks

No. 2.

Record-keeper's Register.

(C O., 1843, No 144, August 16th)

1	2	3	4	5	6	7	8
No of cases	Nature of case, that is, heinous, petty, or under what head.	Name of parties	The crime or offence charged	Thana	Month and year.	Final order	Record-keeper's remarks
							Placed in Rack No 1, Bustah No 4

No. 3.

Book of Appeals.

(C. O., 1843, No 144, August 16th)

No.	Name of appellant	Date of filing appeal.	From whose orders appeal preferred	Abstract of orders passed	Final order passed.

No. 4.

Book of References from other Districts.

(C O, 1843, No. 144, August 16th)

No.	Name of district	Date of receipt of reference	Substance of reference.	Substance of orders passed	Final order passed.

No. 5.

Miscellaneous Matters.

(C O, 1843, No 144, August 16th)

No.	Names of parties	Date of filing	Substance of matter.	Substance of order.	Final order.

REGISTER OF CRIMINALS CONVICTED OF HEINOUS OFFENCES—*See* PAGES 41-45.

REGISTER OF ATTENDANCE OF WITNESSES—*See* PAGE 36.

REGISTERS OF UNCLAIMED AND LAWARIS PROPERTY—PAGE 62.

REGISTER OF SENTENCE WARRANTS—PAGE 21.

PERIODICAL RETURNS.

MONTHLY RETURNS TO MAGISTRATES AND JUDGES FROM SUBORDINATE COURTS.

C. M., 1870, *No.* 7, *December* 17*th.*

From the Registrar of the High Court of Judicature at Fort William in Bengal, to the Superintendent of Stationery,—(*No.* 3816, *dated Calcutta, the* 17*th December* 1870.)

With a view to enable the civil and criminal authorities subordinate to Civil and Sessions Judges to make periodical returns to the latter in such forms as shall be available for the preparation of the *quarterly* returns enjoined on such Judges by circular order No. 31, dated 4th November last, the Court have prepared *slip forms* (A, B, C, & D) as per margin, of which specimens are sent herewith, and direct me to request you will be so good as to provide at once a sufficient supply of the same for the use of Subordinate Judges and Moonsiffs, as well as of District Magistrates and Sub-divisional Officers.

Forms, Civil and Criminal.

A. Statement of *civil* work in the Court of Subordinate Judge or Moonsiff, as the case may be.
B. Statement of appeals before the Courts of Subordinate Judges.
C. Statement of miscellaneous work. (Two forms bear this letter, one for Subordinate Judges, the other for Moonsiffs).
D. Statement of offences reported and persons tried.

2 As regards the *civil* forms (A, B, & C) * * *
[See volume of CIVIL circular orders.]

3. Form D, which is *criminal*, will be required by Sub-divisional Officers, and a specimen in Bengali and Urdoo* is accordingly forwarded.

4. As the above return will be required to be made *quarterly*, and as two copies will be necessary for each officer, one for his office draft and the other for the dispatch copy, eight copies would be necessary, to which might be added four copies to provide for accidents and other contingencies. It will therefore be sufficient if twelve copies of each form are provided by you as a year's supply for each officer requiring them.

* * * * * *

6. In requesting you in the first paragraph of this letter to lay in a sufficient stock of these statements, the Court are particularly anxious to avoid a very large stock of Vernacular slips being at once printed. It is their intention to direct Judges and Magistrates, in making their indents, to specify the number of slip statements that they will require in English and in the Vernacular, and, after these forms have been in use a short time, you will probably not find much difficulty in estimating, with tolerable exactness, the number of both kinds which you will require to keep in store.

P.S.—A set of these forms, when printed or lithographed, should be sent for record in this office.

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* *Note.*—The only Urdu Judgeships are Bhagulpore, Gya, Patna, Sarun, Shahabad, and Tirhoot: the rest may be supplied with Bengali forms.

Circular Memo. No. 7, dated 17th December 1870.

Copy forwarded to all Zillah Judges and District Magistrates for information and guidance, with the request that, in making their indents upon the Superintendent of Stationery, they will pay particular attention to the instructions given to that officer in the 4th paragraph of the annexed letter, and to invariably inform him of the number of slip statements required by them in English and the Vernacular.

D.—(CRIMINAL)

Statement of offences reported, and of persons tried, convicted, and acquitted for each offence in the district of in the quarter.

Designation of officers	Number of offences reported during quarter	Number of persons under trial during quarter.	Discharged without trial	Acquitted	Convicted,	Remaining under trial	REMARKS.
1	2	3	4	5	6	7	8

MONTHLY STATEMENT SHOWING AVERAGE DURATION OF CASES.

Average duration of cases before the Magisterial Authorities in Zillah *from the date of apprehension or attendance on summons to that of disposal, for the month of* 18

(Prescribed by C. M., 1873, No. 1, January 8th.)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
	Cases in which the agency of the Police was employed.									Cases in which the agency of the Police was not employed.					
	Number of cases.	Number of days pending in mofussil.	Number of days pending before the Magistrate.	Total number of days.	Average time occupied in mofussil.	Average time occupied before the Magistrate.	General average.	Longest time a case was pending.	Shortest time a case was pending.	Number of cases.	Number of days pending.	Average time.	Longest time.	Shortest time	
Total															

The 18

Magistrate.

The object of the average duration statement prescribed in circular memorandum No. 1, dated 8th January 1873, is to enable the District Magistrate to fill up column 15 of judicial statement No 3 (annual) Accordingly those persons only should be included in the former who would properly come into columns 3 to 6 of the latter as "brought to trial."—C. M., 1873, No. 2, February 28th.

QUARTERLY STATEMENTS.

Blank Quarterly Statements not to be submitted to High Court.

The Court direct that in future blank statements be not sent up with the quarterly returns, as they only cumber the office. Whenever, therefore, the whipping statement, or the statement of solitary confinement, is blank, a note to that effect will be entered at the back of the statement Nos. 1 to 5 in the column of remarks, and the blank statements will not be sent up.—(*C. O.* 1868, *No.* 3, *April* 16*th.*)

SESSIONS STATEMENTS D, E (FORMERLY I, II).

C. O., 1868, *No.* 4, *May* 6*th.*

Referring to the periods at which sessions of jail delivery now take place, and to the various changes which have been introduced by the Code of Criminal Procedure and the circular orders of this Court, the returns at present submitted by the Sessions Judges are no longer perfectly adapted to the purpose for which they are intended, information on some important points not being found in them at all, and the statements being, on the other hand, encumbered with figures which may be found in the Magistrates' returns, and which it is not necessary to repeat. The rules relating to the holding of the criminal sessions also appear to be susceptible of improvement.

2. The High Court has consequently determined that the returns of the Court of Session, not relating to its appellate business, should be submitted at the close of each actual sessions, and should be so altered in form as to exhibit more conveniently the result of the sessions operations.

3. But as the Court of Session must frequently sit for the purposes of appellate jurisdiction in order to the prompt decision of appeals and petitions coming before it, the returns of appellate business must continue to be submitted periodically; and the Court are of opinion that such statements may now be required not oftener than quarterly, in the same manner as the civil returns are now transmitted. The form of these returns has also been modified.

4. The statements, therefore, which the Courts of Session will hereafter submit (except the annual statements which will be dealt with in a separate order) are as follow:—

[Forms I, II, since superseded by criminal statements D, E, pages 75 to 77.]

III, IV [now III], will be submitted within a week after the close of each sessions. [For No. V see next circular.]

III, IV, and V, jail delivery statements. In the form which accompanies this circular order.

No. III is designed to exhibit the results of one sessions at a single view. In it will be shown the cases of all accused persons who were in jail or on bail at the commencement of the sessions, awaiting trial before the Court of Session, and the mode in which each case and person was disposed of.

5. The High Court has reason to believe that trials are sometimes too lightly postponed. It cannot be too often pointed out that a further detention of an accused person in jail for perhaps two months is in itself no trivial infliction, and is only justified when there is apparently a good case against the prisoners, and when the Judge is satisfied that, for the ends of justice, it is necessary to postpone the trial.

6. The High Court, therefore, directs that at each periodical session all persons awaiting trial be brought before the Judge in open court, and if the Government prosecutor should not be prepared to go to trial in any particular case, that he should be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown. When any trial is postponed, the ground of postponement is to be shortly stated in the column of "remarks" in statement No. III.

7. Offences are to be stated as concisely as possible, with the section of the Indian Penal Code (or other law) applicable, in the form given.

8. When solitary confinement is awarded, the fact (specifying the period) is to be stated in red ink in the column of remarks opposite the name of the prisoner so sentenced.

9. A sentence passed in addition to any other sentence in a different case passed at the same sessions, or one which is to take effect on the expiration of another sentence which the prisoner may be undergoing, is to be similarly indicated.

10 Cases will be entered in the order of trial, so as to enable the Judge's clerk to place each case in the statement at the conclusion of the trial.

11. The smaller form given on the reverse side of this statement is intended to show the number of witnesses and others who have come before the court at each sessions, and the time occupied in disposing of the cases collectively.

12. The existing rule under which, in all districts, the sessions are to be held in each alternate month is abrogated, and the number of sessions, and the time of holding them, will now be left to the discretion of each Sessions Judge, to be determined according to the varying circumstances of his district and the state of business therein.

13. The Judge will accordingly, in the first week of December in each year, fix the number of sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year); and the Magistrate of the district, in communication with all the Subordinate Magistrates who exercise the power of committing to the sessions and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each sessions, a calendar of all such cases in the form annexed, which will be the basis of the Sessions Judge's calendar (statement No III).

14. The document now misnamed a calendar will be discontinued, and the names of the witnesses should be placed on the back of the charge sheet. The observations or judgment of the Magistrate in committing the prisoner will always go up in original with the record,

where, with the original depositions, they should be read by the Judge before the trial Abstracts of the evidence are considered unnecessary, and they are at times misleading

15 The Magistrates will be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing sessions, in order to avoid the needless detention of accused persons for prolonged periods

16. Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the district, by a letter in the annexed form. It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the criminal sessions, and consequently at what period he will be able to take up civil business thereafter.

17. Prosecutors and witnesses will be bound over to appear "at the next criminal sessions commencing on "

18. But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the court of session that such parties may not be brought from their homes to the sudder station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

19. The directions herein contained for committing Magistrates are to be observed so far as they are applicable by civil courts and other authorities committing persons for trial at the sessions.

20. The rules now communicated will take effect from the 1st July next, and the Zillah Judges will be good enough to fix the sessions for the latter half of the year in the first week of June. All such arrangements for the sessions (both on the present occasion and afterwards yearly) are to be immediately reported to this Court for approval, but may be carried out unless the disapproval of the Court be communicated.

Form of Letter to be sent by Committing Officers through the Magistrate of the District to the Judge.

From

Magistrate of

To the Sessions Judge of

Sir,—I beg to report that I have this day committed, to take his trial before the court of sessions the person named in the margin on the charge specified below.

I have, &c.,

A. B.,

Magistrate (*as the case may be*)

Charges.

(*should follow.*)

(*Form of District Magistrate's Calendar.*)

Calendar of accused persons for trial before the Court of Session.

Sessions of 18

Number of case.	Committing officer.	Number and name of accused.	Charges and section, I. P. C.	Date of offence.	Date of apprehension or appearance to summons.	Date of commitment.	In jail or on bail.

D.—PART I.—Magistrates.

Statement of offences reported and of persons tried, convicted, and acquitted in the district of in the quarter of the year 18 .

1	2	3	4	5	6	7	8	9
Designation of Magistrates.	Number of offences reported during quarter.	Number of persons under trial during quarter.	Discharged without trial.	Acquitted.	Convicted.	Committed.	Remaining under trial.	Remarks.
Total ...								

* Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court.—(*G. L.*, 1876, *No.* 2, *March 25th*)

D.—PART II.—Magistrates.

Statement of miscellaneous cases in the district of
for the quarter of the year 18
(No. of persons)

(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

1	2	3	4	5	6	7	8	9
Designation of Magistrate.	Possession.	Nuisance.	Maintenance.	Sureties for the peace.	Sureties for good behaviour.	Order with property.	Cases under section 415, C.C.P.	

Magistrate of the District.

D.—PART II.—Court of Session.†

Statement of commitments in the district of
for the quarter of the year 18 .

1	2	3	4	5	6	7	8
Designation of Committing Officer.	Commitments pending at close of last quarter. (Persons.)‡	Commitments made in the quarter. (Persons.)‡	Persons acquitted or discharged.	Persons convicted.	Sentenced capitally.	Remaining for trial.	Remarks.
							Note.—When a prisoner is convicted of murder and sentenced to death, a note to that effect, with date of the reference to the High Court, is to be made in this column.

* Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court.—(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

† Sessions Judges and District Magistrates shall submit their quarterly statements D, E, direct to the High Court separately and independently.—(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

‡ Persons, not cases.—(*C. M.*, 1874, *No.* 3, *June* 3*rd.*)

E.*

Statement showing the result of appeal and revision in criminal cases in the district of during the quarter of the year 18 .

1	2	3	4	5	6	7	8	9	10	11
Appellate Tribunal.	Number of appellants or petitioners under section 295, C. Cr. P.	NUMBER OF PERSONS.								REMARKS.
		Appeals or applications rejected.	Sentences confirmed.	Sentences reversed.	Sentences enhanced.	Sentences reduced or otherwise altered.	Further inquiry ordered.	Referred to High Court.	Pending.	
Court of Sessions ..										
Magistrate of district										
Total ...										

Magistrate of the District. *Sessions Judge.*

SESSIONS STATEMENT No. .—(TO BE SUBMITTED AFTER EACH SESSIONS.)

Calendar of accused persons tried or brought before the Court of Session of the district of at the jail delivery held in the month of 18 .

Name of accused.	† Offences—Nature of.	DATE OF				Verdict or opinion of assessors or jury ‡	Sentence passed.	REMARKS.
		Offence.	Apprehension.	Commitment.	Sentence.			

* Sessions Judges and District Magistrates shall submit their quarterly statements, D, E, direct to the High Court separately and independently.—(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

† When a person is charged with several offences and convicted of one only, the head of charge on which he has been convicted is to be indicated by red underlining.—(*C. O.*, 1868, *No.* 8, *November* 27*th.*)

‡ In case of jury trials, Sessions Judge to note in column of remarks whether he concurs in the jury's verdict.—(*C. O.*, 1863, *No.* 7, *March* 11*th.*)

In cases of acquittals, observations regarding the propriety of the commitment to be discontinued.—(*C. O.*, 1874, *No.* 4, *July* 23*rd.*)

Index numbers to prisoners.—*See* page 104.

SESSIONS QUARTERLY STATEMENT No. 3.—(FORMERLY III, IV.)

C. O., 1867, *No.* 5, *July* 12*th.*

The Judges of the High Court have directed me to enclose, for your information and guidance, new forms of the sessions statements* Nos. 4 and 5.

2. Copies of the new forms will be supplied to you from time to time on your requisition on application to the Registrar; and you are requested to take care that your supply of them may not run short, as it is the wish of the Court that no other forms should be used.

3. I am to convey to you the following instructions for the use of the forms.

They are both, you will observe, in Europe paper of folio size and on separate leaves. It is intended that one of the forms should be used for each trial reported, the particulars indicated in the several columns being thus exhibited on the first page, and paper of the same size being pasted on where the nature of the case requires further space.—(*Paragraphs* 4, 5, *rescinded by C. O.*, 1870, *No.* 10, *July* 12*th*)

The Judges shall always state on the back of the form the grounds on which any person punishable with death has been sentenced to any punishment other than death (section 287, Code of Criminal Procedure).

And the High Court desire that Sessions Judges will state in the same place the reasons which have prompted a specially light or specially severe sentence in any particular case; and also the reasons of any difference of opinion between the Judge and the assessors or jury.

When the stock of these forms has been exhausted, the Judges will submit, instead of statements Nos. 3 and 4, a new statement No. 3 in the accompanying form, in which the case of every accused person awaiting trial at the commencement of the sessions shall be entered.

The column headed verdict, &c., shall contain a statement whether the accused was tried with a jury or assessors, and the verdict or opinion specifying whether such verdict or opinion was unanimous, or, if not, the particulars of such difference.—(*C. O.*, 1870, *No.* 10, *July* 12*th.*)

SESSIONS STATEMENT No. 3.—(TO BE SUBMITTED AFTER EACH SESSIONS.

Calendar of accused persons tried or brought before the Court of Session of the district of at the jail delivery held in the month of 18

Name of accused.	Offences—nature of	Date of				Verdict or opinion of assessors.	Sentence passed.	Remarks.
		Offence.	Apprehension.	Commitment.	Sentence.			

* For new forms of Nos. 1, 2, now D, E, see circular order No. 4, dated 6th May 1868, and circular order (civil) 1870, No. 31, November 4th; No. 5 has been discontinued by circular order No. 6, dated 9th September 1868.

6. The charge, as entered in column 5 of the abstract statement, need not contain the whole of the charge *verbatim*, but must be given with sufficient fulness and certainty, omitting merely formal parts; and it will be borne in mind that these statements are submitted with a view to enable the Court to exercise the power of revision vested in it under the XXIInd Chapter of the Code of Criminal Procedure.

7. In the 6th column, if the accused be convicted on the charge as laid, the entry need be only "as charged;" but if he be convicted on an amended charge, that charge should be shortly stated, and the section of the Indian Penal Code which applies referred to.

8. In the 7th column it should be stated whether the jury were unanimous in their verdict, or what the majority was; also the names of the jurors should be given, together with any recommendation to mercy or other special matter contained in the verdict. And in trials not by jury, the opinion of the assessors should be given *seriatim*.

9. The several leaves comprising the trials at any one jail delivery should be made up within one outside wrapper, of which a specimen is also forwarded.

10. The forms in hand should be used as far as possible for office copies, and you are requested to report, at the expiration of three months, the extent to which the time of clerks in your office has been economised by the plan now introduced.*

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* The following demi-official was addressed to all Sessions Judges in continuation of the above circular order:—

DATED CALCUTTA, THE 24TH SEPTEMBER 1867.

I am desired by the Judges of the 5th Bench to call your attention to the circular order dated 12th July last, No. 5, which relates to the mode in which the new abstract statements of sessions trials are to be prepared. It could hardly have been supposed that misunderstanding could occur on this point; but as some Zillah Judges appear to have wholly failed to apprehend the true meaning of the circular and of the forms themselves, it has been thought better to offer a few words of guidance upon the subject, which, as to those Judges who have carried out the order correctly, will have only the effect of confirming them in the right practice.

The tabular or front-side of the statement No. 4, for instance, is not meant to contain a regular indictment, but the charge in abstract; *e.g.*—

MURDER of Oposhto Dass, section 302, Indian Penal Code; or

THEFT in a dwelling house (of Ali Kurim), section 380, Indian Penal Code; or

GIVING FALSE EVIDENCE in a judicial proceeding, viz. in a trial before the Magistrate of Hooghly, in having stated "I saw the prisoner A. B. strike C. D.," &c (*not giving the false evidence in full, but so much of it as will make the abstract of the charge intelligible*) under section 193, Indian Penal Code, and so on

Column 6, in like manner, is to contain shortly the offence proved. If that offence be the offence charged, the words "as charged" will be sufficient; if some other offence, then it is to be CONCISELY given as "culpable homicide under section 304, Indian Penal Code," or "theft under section 379," or "giving false evidence otherwise than in a judicial proceeding, section 193," and so on.

In column 7, it is not necessary to say at length that the jury unanimously find that A. B. is guilty of the offence specified, viz. that he has, &c., &c., and that he has thereby, &c., &c.; but it should be stated that "the jury (or a majority consisting of 6 out of 7, or as the case may be,) found the prisoner guilty of the first charge, and not guilty of the second," or as the case may be—the dissentient juror being marked with the letter D. opposite to his name—and under this the Judge will write his concurrence in, or disapproval of the verdict, but without giving his reasons in this place, and then will follow the sentence, shortly stated.

Where the trial has not been by jury, the opinions of the assessors should be given so as to show the view of each, the reasons not being stated at full length, *e.g.*—

"The assessor Ramlol Parree considered the charge made out; he remarks that the witnesses "spoke with an air of truth, that there was no reason to suppose the charge malicious, and that "the prisoner's *alibi* wholly broke down."

"The assessor Gholam Ghous also thought the charge proved, but said that the accused "being a very young man, some allowance might be made, &c."

QUARTERLY STATEMENTS.

C. O., 1873, *No.* 11, *September* 10*th.*

C. O. No. 31, dated 4th November 1870, paras. 7 to 9.

The orders noted on the margin are hereby rescinded, and the quarterly statements D and E will henceforth be submitted by the Sessions Judges to the High Court in the revised form now circulated, commencing with those for the 3rd quarter of 1873.

2. Statements received in other than the printed forms supplied by the Superintendent of Stationery will be returned, and the district will be dealt with as if no statements had been received.

* *e.g.* Magistrate of the District
A. Jones, Esq., C.S., 1st class.
B. Williams, Esq., 1st class.
Baboo M. N. Dass, 1st class.
C. Howell, Esq., C.S., 2nd class.
M. Anwar Ali, 2nd class.
&c, &c

3. Column 1 of statement D will comprise the names of all officers exercising criminal authority in the district; the letters "C. S." being inserted after the names of covenanted officers. Magistrates, other than the Magistrate of the district, will be designated according to their powers, as Magistrates of the 1st class, of the 2nd class, or of the 3rd class; and not as Joint-Magistrates, Assistant Magistrates, or Deputy Magistrates.

4. The benches of Magistrates which have sat in the quarter under report will also be entered here. The names of the Magistrates who have served on the benches will be shown in the column of remarks.

[As Honorary Magistrates in some districts are now exceedingly numerous, but, as a general rule, they singly try few cases, the Court

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These particulars may generally be filled in by an intelligent clerk; a little instruction may at first be necessary, but the officer, if he is fit for his situation, ought soon to learn to do the work without assistance. A neat, not diffuse, handwriting is essential for the mechanical portion of the work. Much time and trouble is saved to the superior court by attention to this matter, and work of a different character will not be tolerated.

The abstract statement on the reverse side should be prepared by the Judge himself, unless he has the good fortune to possess a very capable head clerk; but even the best ministerial officer can scarcely convey the pith of a case with the same force and condensation as the officer who has tried it.

It is not to contain the judgment or the summing up, nor any argument, nor a repetition of the charge, but simply the leading circumstances in evidence, the view which the Judge has taken of the case, and, in some instances, the reasons for passing a particular sentence, *e.g.* for not inflicting capital punishment, or for passing a sentence apparently inadequate.

But the statement should be so condensed as not in ordinary cases to exceed the space allowed on the turn-over.

The object of the Court in reviewing the abstract statements is not to criticise the performance of the Court of Sessions, but to ascertain that the trial has been regular, the conclusion just, and the sentence warranted by law.

It is considered that minute objections, whether of law or of fact, may be properly left to appellants, and that in revision it is only needful to know that substantial justice has been done

But the Sessions Judges will not for this reason omit to make their proceedings on the trial full, complete, and formal, as far as form implies deliberation and attention to the rights of the accused as well as those of the prosecutor.

Some of the Zillah Judges have referred to the preparation of those abstracts as an additional duty cast upon them. It is believed, however, that after a little practice the trouble will not be great. It may also be observed that many of the Judges may relieve themselves by reducing the length of their summing up or directions to the jury, which are frequently given at quite needless length. The printed forms are invariably to be employed, and the ruling and manuscript preparation of written headings is strictly forbidden.

You are requested to be good enough to acknowledge demi-officially the receipt of this memorandum, and to take care that it is carefully read and thoroughly understood by your clerks.

directs that in the first column of statement D, part I, the Honorary Magistrates who have acted singly may be entered together, and their cases exhibited in one line. But benches of Magistrates, however composed, should be exhibited separately, one line to each, thus—

Sudder bench of Magistrates————————————————

Ferozepore „ „ ————————————————

Honorary Magistrates sitting singly————————————

(*C. M*, 1874, *No.* 1, *February* 12*th.*)

5. Columns 3, 4, and 5, will be filled up according to the instructions contained in the circular order No. 7, dated 10th April 1873 [see next circular], to which it may be added that column 5, "acquitted," will show all dismissals (as under sec 205) and discharges (as under sec. 496) which operate as acquittals. New trials ordered under section 328 will appear in column 8. The persons shown as "remaining under trial" at the close of one quarter should be included (though not separately exhibited) in column 3 of the return for the following quarter, as "persons under trial." Cases decided by Municipal Commissioners should not be entered in this statement. Statement D

6. This statement is intended to comprise all appeals preferred either to the Sessions Judge or to the Magistrate, without detail of the officers from whom the appeals may be preferred; and also references made to the High Court under section 296, Act X of 1872, either by the Sessions Judge or by the Magistrate. Persons whose cases are shown as "pending" in column 10 should be included in the number entered in column 2 of the ensuing quarter's returns. Statement E

7. After the Magistrate has prepared and signed part I of statement D, and filled up his portion of statement E, the statements will be submitted to the Sessions Judge, who will enter in part II, statement D, the result of trials disposed of by him, and in statement E the result of appeals preferred before his Court. He will then forward the completed return to the High Court.

In modification of para. 8 of circular order No. 11, dated 10th September 1873, the Court directs that Sessions Judges and District Magistrates shall, until further orders, submit the quarterly statements D and E separately, and independently, direct to the Court.

2. Each will fill up the portion concerning him in the present forms. In part II of statement D the Sessions Judge will continue to give the information hitherto given regarding commitments. But this will now become for Magistrates a statement of miscellaneous cases, and information regarding the following classes of cases will be given:—

Column (2) possession, (3) nuisance, (4) maintenance, (5) sureties of the peace, (6) sureties for good behaviour, (7) order with property.

3. The Superintendent of Stationery has already (see General letter No. 1, dated the 9th March 1876,) issued forms for this purpose. [*General Letter*, 1876, *No.* 2, *March* 25*th.*]

In continuation of general letter No. 2 of the 25th March last, the High Court directs that in filling up column 7, part II of quarterly statement D, District Magistrates will at present enter only

cases coining under section 518 of the Code of Criminal Procedure as distinguished from section 521, and under no others.

2 Cases coming under section 415 of the Criminal Procedure Code, where they occur, should be shown in these statements, pending the issue of revised forms, in a space ruled off the column of "Remarks"

3. Magistrates will understand that the last quoted section is not to be used for the purpose of enabling police-officers, or Magistrates themselves, to interfere in questions of right to property in dispute.—(*General Letter*, 1876, *No.* 3, *May* 22*nd.*)

8. Both Magistrates and Judges are called upon to see that the statements are prepared *neatly*, as well as correctly, in respect of the entries made, and that they are not disfigured by slovenly or bad writing On such cases occurring, the statements will be liable to be returned.

9. The column of remarks, which in each statement is of ample size, will contain the mention of any cases or particulars which do not appear to be fairly provided for in other columns, and will also contain brief explanations of any noticeable results appearing on the face of the returns, specially of such as, if unexplained, might lead to erroneous conclusions: in short, any comments that will tend to throw light on the figures.

10. This return will not interfere with the submission of the statement No. 3 prescribed by circular order No. 10, dated 12th July 1870.

E.

Statement showing the result of appeal and revision in criminal cases in the district of during the quarter of the year 18 .

1	2	3	4	5	6	7	8	9	10	11
		Number of Persons								
Appellate Tribunal	Number of appellants or petitioners under section 296, C Cr P	Appeals or applications rejected	Sentences confirmed	Sentences reversed	Sentences enhanced	Sentences reduced or otherwise altered	Further inquiry ordered	Referred to High Court	Pending	Remarks.
Court of Session										
Magistrate of District										
Total										

Magistrate of the District *Sessions Judge.*

INSTRUCTIONS ON QUARTERLY STATEMENT D—(CRIMINAL).

C. O., 1873, *No.* 7, *April* 10*th.*

The following instructions should be observed in the preparation of quarterly statement D:—

1. The return has reference to judicial work alone, the High Court having no supervision of police work in any shape * No person who has not appeared personally or by agent in the Magistrate's Court is to be included in the statement; but all persons who have appeared, whether in obedience to summons, warrant, or other process, or voluntarily, to answer a criminal charge, should be entered in column 3, *number of persons under trial during quarter.*

2. Column 4, *discharged without trial*, will contain only persons whose discharge under sections 195 and 215, Act X of 1872, is not an acquittal.

3. Column 5, *acquitted*, will contain absolute acquittals, such as under sections 211 and 220, and also the cases of persons in respect of whom the dismissal of a complaint, under section 208, operates, by section 212, as an acquittal; and persons who, having appeared to answer complaints withdrawn under section 210, are thereupon discharged, as such complaints cannot again be entertained.

4. Columns 6 and 7 admit of no mistake, and call for no explanations.

5. All persons discharged from bail, taken under section 125, without appearing before a Magistrate, will cease to appear in these returns.

EXPLANATION AS TO DISPROPORTION OR APPARENT DISPROPORTION OF ACQUITTALS TO CONVICTIONS.

The late Sudder Court's circular† of the 21st May 1862, No. 14, (or No. 98 of the published series) is hereby recalled.

2. The High Court reserves to itself the power of calling for explanations whenever the returns exhibit results which appear to show want of circumspection in the issue of warrant or summons by Magistrates.

3. This order will not absolve the Magistrate of the district from the duty of maintaining a watchful and intelligent control over the proceedings of his subordinates in this respect.—(*C. O.*, 1873, *No.* 8, *May* 19*th.*)

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* Appeals from orders of District Superintendent of Police, which are heard by Magistrate in his executive, not judicial capacity, are to be excluded from returns to High Court So also fines on ministerial officers for neglect of duty are not to be entered in Magistrate's statements —(*C O*, 1868, *No* 9, *December* 15*th.*)

† Prescribing that, whenever the number of persons acquitted to convicted was disproportionately large, which was considered to be the case whenever it amounted to one half of the persons tried, a note in explanation of the cause thereof was to be invariably submitted by the Magistrate with the quarterly returns.—(*C. O*, *No.* 98, 21*st May* 1862.)

Responsibility of Magistrates and Judges as to control over Subordinate Courts.

With reference to the altered form of the quarterly returns of criminal business now required from the Magistrates and Sessions Judges, a larger share of responsibility now rests upon the local authorities than formerly. The Court thinks it necessary to bring the fact prominently to the notice of the Sessions Judges and Magistrates of districts, who are accordingly requested to inform themselves thoroughly, from time to time, of the mode in which business is transacted by their subordinates Such inquiry is far more effective than the mere inspection of statements.—(*C. O.*, 1871, *No.* 8, *July* 27*th.*)

Magisterial officers employed executively.

With reference to details as to the manner in which the time of magisterial officers has been employed, the High Court only requires, in the case of officers whose duties are partly judicial and partly executive, the number of days devoted to the former, specifying, where there is judicial duty of more than one kind, the time given to each kind.—(*C. M.*, 1873, *No* 5, *June* 10*th.*)

Annual Report on Criminal Administration.

Circular No. 4, *dated Calcutta, the 2nd February* 1871.

The following directions are issued for the guidance of Sessions Judges in the preparation of their criminal administration reports, with reference to the new forms prescribed in circular order No. 32, dated 8th November 1870, and in supersession of previous orders on the subject.

The report is to contain, *inter alia*, the following matters:—

Original Jurisdiction.

Statement of number of offences ascertained to have been committed in year under report, as compared with previous year.

Offences	1869	1870
Against the State or public (Chapters VI to XV, I P Code)		
Against the person (Chapters XVI, XIX, XX to XXII)		
Against property (Chapters XVII and XVIII)		
Under special laws		
Total		

Statement showing the number of persons brought to trial during the year, as well as those convicted, acquitted, or discharged, and remaining under trial.

Offences	Persons				
	Under trial	Acquitted or discharged	Convicted	Died, escaped, transferred	Remaining under trial
Against the State or public (Chapters VI to XV, I P Code)					
Against the person (Chapters XVI, XIX, XX to XXII)					
Against property (Chapters XVII and XVIII)					
Under special laws					
Total					

Statement showing the number of Witnesses and their Attendance.

Courts in detail	Number of Witnesses Discharged			
	On 1st day	On 2nd day	On 3rd day	After 3rd day
Magistrate of the district				
Joint-Magistrate				
Assistant Magistrate				
Deputy Magistrate				
Total				

APPELLATE JURISDICTION.

Table showing appeals from sentences and orders of Courts of Original Jurisdiction, preferred in the district, disposed of, and pending in the year under report, as compared with the previous year.

From sentence or order of	Preferred.		Disposed of.				Remaining for trial.	
	1869.	1870.	1869.		1870.		1869.	1870.
			Before Court of Session.	Before Magistrate of the district.	Before Court of Session.	Before Magistrate of the district.		
Magistrate of the district...								
Joint-Magistrate								
Assistant Magistrate ...								
Deputy Magistrate								
Total ...								

Table showing the number of appeals preferred to the Court of Session, or to the Magistrate of the district, from the Subordinate Criminal Courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided.

Appeals from sentence or order of	Number of appeals preferred.	Ratio of appeals to sentences or orders.	Number of sentences or orders affirmed.	Ratio of affirmed to passed.
District Magistrate				
&c., &c.				

Separate reports, similar in character to that submitted with the civil administration report, should be submitted in respect of all officers employed in the administration of criminal justice. In respect of every such officer, figures should be shown exhibiting the amount of work done, the extent to which he has been employed in other duties, the result of appeals from his decisions, and also the result of commitments made by him, in so far as such result indicates any want of discretion on his part or the converse. To such results should be appended the opinion of the District Magistrate in respect of the officer, which should be followed in each case by that of the Sessions Judge.

In prescribing these materials for the administration report, the Court has expressly refrained from directing the use of any particular form of covering letter, considering that such a matter is best left to the judgment of the several authorities concerned.

Explanations of the Annual Statements

C. O, 1870, *No.* 32, *November* 8*th.*

In supersession of previous orders on the subject of annual statements, the High Court of Judicature hereby direct that the undermentioned statements shall be submitted in accordance with the instructions following. Under the orders of Government, the Collectors will furnish the several Zillah Judges with the particulars required to complete those parts of the returns which relate to revenue courts and revenue cases.

B 1

Annual.

Statement showing the various judicial tribunals, original and appellate, existing in the province of on the last day of the year.

2. This statement is to be furnished by the Judge from the information in his own office and that which he will obtain from the several courts—civil, revenue, and criminal. From the returns received from the several districts under the authority of the Court, a collective statement will be prepared by the Court for transmission to the Government Attention is directed to clauses (*a*) and (*b*) of the Government resolution given at foot This return is to be forwarded as soon as it can be prepared without delaying, for this purpose, the other statements now ordered, which do not differ very widely from those previously in use.

B 2

Statement of offence reported and of persons tried, convicted, and acquitted for each offence in the district of in the year 18 .

3 This statement is likewise to be submitted annually by the Zillah Judge, who will receive it from the Magistrate of the district. It will comprise all cases in whatever criminal court they may have been disposed of, one figure showing the cases of each kind which have been before *all the courts* of the district. Accused persons who have been committed for trial, but whose cases have not been disposed of by the court of session, will be entered as "under trial."

B. 3.

Statement showing the general result of criminal trials in the tribunals of the various classes in the district of in the year 18 .

4. This statement, *annual*, will be prepared in the office of the Magistrate of the district on data furnished to him by his subordinates; it will then be forwarded by him to the Zillah Judge, who will add the figures for his own court and transmit it to the High Court, where a complete statement for the whole of the territories under the Court's jurisdiction will be prepared.

B 4

Statement showing the punishments inflicted by various criminal tribunals in the district of in the year 18

5. This return will be furnished *annually* in the same manner as the last preceding, and will require careful attention.

B 5

Statement showing the result of appeal and revision in criminal cases in the district of in the year 18 . .

6 This statement will be submitted annually by the Zillah Judge, who will first receive from the Magistrate of the district the return of his own court.

(*a*) All heads of departments are to fill up and supply the detailed tables proposed by the Committee, *only* so far as the entries can be compiled from the materials which have been collected for the more concise tables which have been hitherto supplied with the administration reports or annual reports of each department. No information which is not already in the offices is to be sought for

(*b*) They are to throw into the shape required by the new statistical tables all such items and the entries in such columns as can be reliably compiled from the registers and details which have already been kept up, and only these

ANNUAL STATEMENT No. 1—(CRIMINAL.)

Classification of Courts and Jurisdictions. Their Outturn of Work, Cost, &c.

1	2	3	4	5	6	7	8	9	10	11	12
Class of tribunal, distinguishing those which exercise powers in one department from those exercising powers in two or three departments, and those consisting of paid from unpaid Judges.	Number of judicial divisions.	Average area of each division in square miles.	Average population of each division.	Number of tribunals.	Constitution of tribunals, stating number of Judges in each, and Jury or Assessors, if any.	Judicial powers of each tribunal, original and appellate	Prescribed qualification of Judges previous to appointment.	Total Number of Judges. European. Covenanted	Commissioned military officers.	Uncovenanted	Native.
Designation of Courts, &c., (C. M, 1874, No 1, January 24th) according to Criminal Procedure Code.											
Magistrates of the third class exercising criminal powers only { Paid .. / Unpaid ..											
Ditto ditto ditto criminal and civil powers ...											
Ditto ditto ditto criminal and revenue powers ..											
Ditto ditto ditto criminal, civil, and revenue powers											
Ditto second class exercising criminal powers only . ..											
Ditto ditto ditto criminal and civil powers .											
Ditto ditto ditto criminal and revenue powers											
Ditto ditto ditto criminal, civil, and revenue powers											
Benches of Magistrates											
Magistrates of the first class exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers ..											
Ditto of districts exercising only criminal powers											
Ditto ditto ditto also revenue powers . ..											
Ditto ditto ditto also revenue and civil powers											
Ditto exercising the powers described by section 36, Act X of 1872											
Courts of Session											
Total ...											

ANNUAL STATEMENT No. 1—(CRIMINAL.)—(*Continued.*)

Class of tribunal, distinguishing those which exercise powers in one department from those exercising powers in two or three departments and those consisting of paid from unpaid Judges	13	14	15	16	17	18	19	20	21	22	23
	Average Annual Salary of each paid Judge		Total cost of tribunals	Net receipts from stamps	Executive or other functions exercised by the same officers	Average number of days in the year devoted to judicial work	Average number of advocates attached to each tribunal	Number of cases decided during the year.			
	European	Native						Criminal	Civil	Revenue	Appeal
Designation of Courts, &c., (C M, 1874, No 1, January 24th) according to Criminal Procedure Code											
Magistrates of the third class exercising criminal powers only { Paid / Unpaid											
Ditto ditto ditto criminal and civil powers											
Ditto ditto ditto criminal and revenue powers											
Ditto ditto ditto criminal, civil, and revenue powers											
Ditto second class exercising criminal powers only											
Ditto ditto ditto criminal and civil powers											
Ditto ditto ditto criminal and revenue powers											
Ditto ditto ditto criminal, civil, and revenue powers											
Benches of Magistrates											
Magistrates of the first class exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers											
Ditto of districts exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers											
Ditto exercising the powers described by section 36, Act X of 1872											
Courts of Session											
Total											

JUDICIAL STATEMENT 2—(CRIMINAL.)

Statement of offences reported and of persons tried, convicted, and acquitted for each offence in the district of in the year 18

Description of offences.	Number of offences reported during the year.	Number of persons* under trial during the year.	Acquitted or discharged.	Convicted.	Died, escaped, transferred.	Remaining under trial.	REMARKS
1	2	3	4	5	6	7	
According to the classified list which accompanies. It will not of course be necessary to enter all the headings in the classified list in this column, but only the headings descriptive of offences actually committed. These will be entered according to the order given in the list which follows the arrangement of the chapters in the Penal Code. [For prescribed schedule, see next circular order, No. 3 of 2nd February 1871.]							The number committed out of those remaining under trial should be noted in this column for remarks.

* A person accused under more than one head of charge in the same trial should be returned only once, viz. under the principal head of charge.—(C. O., 1875, No. 3, June 3rd.)

The total number of persons shown in statement No. 2 as "acquitted or discharged" (column 4) should agree with the total of the corresponding columns (9 and 10) in statement No. 3, and the persons "convicted" (column 5) according to the former statement should agree with those shewn in column 11 of the latter statement, care being taken to include in the comparison the figures under "sessions courts" in statement No. 3. The same remark applies to the columns headed "died, escaped, transferred," and "remaining under trial," at the end of the year.

The number of *committed* persons shown in the column of remarks, statement No. 2, should always correspond with the number shown in statement No. 3, as "remaining at the end of the year" *before the sessions court*, unless there is a sufficient reason for a discrepancy, which should be stated.—(*C. M.*, 1876, *No. A*, *January* 15*th*, *paragraphs* 2 *and* 3.)

NOTES ON LAST STATEMENT IN C. O., 1871, No. 3, FEBRUARY 2ND, PARAGRAPHS 2 AND 3.

Judicial Statement (*Criminal*) 2.

The classification list alluded to in column 2 of this statement, of which a copy accompanied the circular order in question, is merely that given by the Statistical Committee, and was clearly not intended to be an exhaustive, but rather a suggestive, list of offences. It is nowhere recognised or prescribed in the circular itself, and was not meant entirely

to supersede the existing schedule provided by circular order No 19, dated 31st December 1861. The Court have, however, determined to reconstruct that schedule on the principle of the classification list, and to adapt it to its requirements by a rearrangement of its descriptive headings according to the order of the sections of the Indian Penal Code. This has been done in the new schedule circulated herewith.

As regards "attempts," the Court are of opinion that when the attempt is one for the punishment of which express provision is made (such as attempts to commit murder, culpable homicide) whereby, in fact, such attempts are constituted substantive offences, they should come in their order accordingly; but that attempts punishable under the general provisions of section 511, Indian Penal Code, should be inserted where they occur, immediately after the offences at which they are attempts. Finally, offences under special and local laws should be exhibited, arranged alphabetically, as indicated in the accompanying list, after the offences classified as above mentioned.

SCHEDULE of offences under Act XLV of 1860.

No	Description of Offences		Section of Penal Code applicable
1	Offences against the State	..	Sections 121 to 130.
2	" relating to the Army and Navy	...	" 131 to 140
3	Offences against public tranquillity .	Unlawful assembly	" 143 to 145, 149 to 151, 157, 158
4		Rioting, &c	" 147, 148 152, and 153 to 156
5		Affray ...	" 160
6	Offences ...	By public servants . .	" 161 to 169.
7		Relating to public servants	" 161, 170, and 171.
8	Contempt of lawful authority	.. ..	" 172 to 190
9	False evidence, or subornation, &c, of the same	..	" 193 to 200.
10	Offences against public justice	. ..	" 201 to 229
11	" relating to coin	... .	" 231 to 254
12	" " to stamps	.. ..	" 255 to 263
13	" " to weights and measures	. ..	" 264 to 267
14	" affecting public health	..	" 269 to 278
15	" " safety	..	" 279 to 289.
16	" " convenience	..	" 290 and 291.
17	" " decency or morals	.	" 292 to 294
18	" relating to religion	. ...	" 295 to 298
19	Murder	..	" 302 and 303.
20	Culpable homicide	..	" 304
21	Abetment of suicide	..	" 305 and 306.
22	Thugee, &c		" 311.
23	Causing miscarriage	Attended with aggravating circumstances	" 312 to 315.
24		Other cases	" 312.
25	Injury to unborn children .		" 316
26	Exposure of infants		" 317
27	Concealment of births by secret disposal of the dead body		" 318
28	Hurt ...	With aggravating circumstances	" 325 to 331, and 333
29		Other cases	" 323, 324, 332, and 334 to 338
30	Wrongful restraint		" 341.
31	" confinement		" 342 to 348
32	Criminal force or assault		" 352 to 358.

SCHEDULE of Offences under Act XLV of 1860.—(Continued.)

No.	Description of Offences	Sections of Penal Code applicable.
33	Kidnapping or forcible abduction ... With aggravating circumstances ...	Sections 364, 366, 367.
34	Kidnapping or forcible abduction ... Other cases	" 363, 365, 368, 369.
35	Slavery	" 370 and 371.
36	Buying or selling a minor for the purpose of prostitution ...	" 372 and 373.
37	Forced labour	" 374.
38	Rape	" 376.
39	Unnatural offences	" 377.
40	Theft ... ... With aggravating circumstances ...	" 382.
41	Theft ... ... Other cases	" 379 to 381, and 401.
42	Extortion ... With aggravating circumstances ...	" 386 to 389.
43	Extortion ... Other cases	" 384 and 385.
44	Robbery... ... With hurt	" 394.
45	Robbery... ... Other cases	" 392.
46	Dacoity ... ... With murder	" 396
47	Dacoity ... ... With attempt to cause death or grievous hurt	" 397.
48	Dacoity ... ... Other cases	" 395, 399, 400, and 402.
49	Criminal misappropriation of property	" 403 and 404,
50	" breach of trust	" 405 to 409.
51	Receiving or habitually dealing in stolen or plundered property ...	" 411 to 414.
52	Cheating	" 417 to 420.
53	Fraudulent deeds and disposition of property	" 421 to 424.
54	Mischief ... .. With aggravating circumstances ...	" 429 to 433, and 435 to 440.
55	Mischief ... .. Other cases	" 426 to 428, and 434.
56	Criminal trespass ... Resulting in death or other grievous hurt	" 459 and 460.
57	Criminal trespass ... For commission of serious offences ...	" 449, 450, 451, 452, 454, 455, 457, and 458.
58	Criminal trespass ... Other cases	" 447, 448, 453, 556, 461, and 462.
59	Forgery or uttering or possessing forged documents or papers .	" 465 to 471, and 474.
60	Counterfeiting or making or possessing a counterfeit seal, &c., for purposes of forgery.	" 472 to 476.
61	Fraudulently destroying or defacing a will or other documents	" 477.
62	Using a false trade or property-mark and knowingly selling property so marked.	" 482, 486, 487, and 488.
63	Conterfeiting or making, or possessing a die, plate or instrument for counterfeiting a trade or property-mark.	" 483 to 485.
64	Removing, destroying, &c., a trade or property-mark with intent to cause injury	" 489.
65	Criminal breach of contract of service	" 490 to 492.
66	Offences relating to marriage	" 493 to 498.
67	Defamation	" 500 to 502.
68	Criminal intimidation, insult or annoyance... Resulting in death or other grievous hurt	" 506.
69	Criminal intimidation, insult or annoyance... Other cases	" 504 to 510.
70	Attempts	" 511.
71	Other offences not included in the above specifications, such as—	
	1. Abkaree laws, breach of—	
	2. Aliens, breach of laws relating to—	
	3. Chowkeedaree cases under Act XX of 1856 and Act V of 1861.	
	4. Customs laws, breach of—	
	5. Ferry laws, breach of—	
	6. Lotteries, breach of law relating to—	
	7. Post Office laws, breach of—	
	8. Printing Presses, breach of laws relating to—	
	9. Railways laws, breach of—	
	10. Salt laws, breach of—	

PRISONER ACCUSED UNDER MORE THAN ONE HEAD OF CHARGE.

C. O., 1875, *No.* 3, *June 3rd.*

As it appears that in the preparation of the annual and quarterly statements submitted to the Court, it has been commonly the practice to return the "persons under trial" on the principle of exhibiting an accused person under each of the heads of charge entered against him,* thus causing the same person to be counted according to the number of charges exhibited, and the apparent number of persons reported to be different from the actual number, the Court is pleased to lay down the following instruction for general observance by Magistrates.

2. An accused person should be exhibited under the principal charge only, unless he happens to be accused of entirely distinct offences, supported by separate evidence, in which case the trial would be separate, and the results independent.

* *Vide* judicial statement No 2, column I

INDEX NUMBERS TO PRISONERS.

The High Court observes that there is [1870] a diversity of practice in numbering the accused; some officers giving fresh number to the prisoners in each case, while others continue the series throughout the year.—(*C. O*, 1870, *No.* 7, *March* 11*th.*)

JUDICIAL STATEMENT 3—(CRIMINAL)

Statement showing the general result of criminal trials in the tribunals of various classes in the district of in the year 18

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	NUMBER OF PERSONS DEALT WITH							PERSONS DISPOSED OF.								
		Brought to trial during present year														
Class of Tribunals	Remaining at end of last year	Under arrest by police	Upon warrant	On summons	Voluntarily	Received by transfer	Total	Discharged without trial	Acquitted	Convicted.	Committed or referred	Died, escaped, or transferred	Remaining at end of year	Average number of days during which each case lasted	Number of witnesses who attended	REMARKS.
Unpaid Magistrates ..																
Bench Magistrate																
Local and subordinate paid Magistrates ..																
Full power Magistrates exercising jurisdiction throughout the district																
Chief Magistrates of districts																
Total Magistracy ..																
Sessions Courts .																
High Court																
GRAND TOTAL																

With reference to column 15 of this statement, headed "average number of days during which each case lasted," the High Court consider that the average duration should be calculated from date of complaint or information to date of conviction, acquittal, or discharge, and where there are several persons accused in the same case in respect of whom final orders are not passed at the same time, as will sometimes happen, then to the date of last order —(*C. O*, 1871, *No.* 3, *February 2nd, paragraph* 4.)

In calculating the duration of a case with a view to filling up column 15 of statement No. 3, the starting point to be taken is not the date of "complaint" or "information," but that of *apprehension* or *attendance on summons*, the information relates to *persons* "brought to trial" within the meaning of columns 3 to 6, judicial statement No. 3, and not to *cases* in the abstract, where a complaint is merely made or information laid.

Accordingly a general return should be made at the close of each year by the District Magistrate and submitted to the High Court with the annual statements of the same nature as the monthly return prescribed by circular memorandum No 1, dated 8th January 1873. Similar information should be added with reference to the sessions courts, *mutatis mutandis*, that is to say, the *actual* number of days occupied should be given, commencing from the date of commitment, without distinguishing cases in which the agency of the police has been employed from those in which it has not.—(*C. M.*, 1876, *No. A*, *January 15th, paragraphs* 4 *and* 5.)

JUDICIAL STATEMENT

Statement showing the punishments inflicted by various

Class of Tribunal	PERSONS SENTENCED TO												PERSONS ORDERED TO FIND OR GIVE		
		TRANSPORTATION			IMPRISONMENT				FINE		WHIPPING				
					Rigorous										
	Death.	For life	For a term	Penal servitude.	With solitary confinement.	Without solitary confinement	Simple	Forfeiture of property	With imprisonment	Without imprisonment.	In addition to other punishment	In lieu of other punishment.	Surety of the peace.	Recognizance	Sureties for good behaviour
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

4.—(CRIMINAL)

Criminal Tribunals in the district of *in the year* 18

DETAIL OF PUNISHMENT																					
FINE									IMPRISONMENT										WHIPPED		
									15 days		6 months.		2 years		7 years		Above 7 years				
Rs. 10 and under	Rs. 50 and under	Rs 100 and under	Rs 500 and under	Rs. 1,000 and under	Above Rs 1,000	Total amount of fines	Amount realized	Amount paid by way of compensation.	Rigorous.	Simple	Rigorous	Simple	Rigorous	Simple.	Rigorous.	Simple.	Rigorous	Simple	10 stripes and under	20 stripes and under	30 stripes and under
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37

Where the aggregate of the smaller columns 1 to 15 (excluding columns 9 and 11) of judicial statement No. 4 falls short of the number of convictions given in statements Nos. 2 and 3, the difference should be accounted for by reference to chapters 39, 40, and 41* of the criminal procedure, or otherwise, as the case may be.

Local nuisances Possession. Maintenance of wives and families.

To save calls for explanation, the Sessions Judge should see that the aggregate number of persons fined, imprisoned, or whipped, corresponds exactly with the details under those heads respectively in statement No. 4.—(*C. M.*, 1876, *No. A*, *January* 15*th*, *paras.* 6 *and* 7.)

JUDICIAL STATEMENT 5.—(CRIMINAL.)

Statement showing the result of appeal and revision in criminal cases in the district of during the year 18

Tribunal.	Number of appellants or persons applying for revision under section 295, C. Cr. P.	Number of persons.								Remarks
		Appeals or applications rejected.	Sentences confirmed.	Sentences modified.	Sentences reversed.	Proceedings quashed.	Further inquiry or evidence ordered.	Cases referred for revision to High Court.	Pending	
1	2	3	4	5	6	7	8	9	10	11

JUDICIAL STATEMENT 11.

(No. 11 of Annual Serifs, both Civil and Criminal)

Statement showing employment of Juries and Assessors in the Civil and Criminal Courts of the province of *in the year* 18

Classes of courts in which jurors or assessors are employed, distinguishing criminal from civil courts	Established or average number of jury or assessors in each case, and prescribed qualification	Number of cases tried by jury	Number of cases with assessors	Jury Trials		Assessors' Trials		Note showing in what classes of cases juries and assessors have been principally employed	Remarks
				Cases in which the Judge approved of the verdict.	Cases in which the Judge did not approve of the verdict	Number of cases in which Judges agreed with assessors	Number of cases in which Judges differed from assessors		
1	2	3	4	5	6	7	8	9	

This statement will be compiled under the direction of the Zillah Judge from the records in his office. It will usually be a blank, except in regard to the Court of Session, and the penultimate column may be filled by reference to the orders of the local Government in this particular.

In publishing these forms, the Court desire to impress it upon the Zillah Judge and other officers concerned in the preparation of them that returns of this kind, unless they are correct and framed in exact compliance with instructions, are not merely valueless, but mischievous It will be expected, therefore, that pains will be taken to render returns as correct as possible—(*C. O*, 1870, *No.* 32, *Civil and Criminal, November 8th*)

ALPHABETICAL INDEX

TO

CIRCULAR ORDERS

OF THE

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CRIMINAL.

A.

PAGE.

ACCUSED—
District Magistrates' calendar of—persons for trial before the Court of Session ... 75
Examination of—prior to commitment ... 6
Sessions calendar of—persons tried or brought before the Court of Session 77-78
When several persons are—of the same offence, and the case is one for the Sessions, all should be committed 7-8

ACQUITTAL—
Explanations as to disproportion or apparent disproportion of—to convictions 83
Finding in case of—on ground of being lunatic .. 41-43

ACT—
General instructions on the Whipping— . .. 50 54

ACT XLV OF 1860—
Schedule of offences 91 92

ADMINISTRATION—
Annual report on criminal— 84-86

AFFIRMATIONS—
Witnesses', interpreters', and jurors'—and oaths .. 31

AGENTS—
Revenue—and mookhtars to renew certificates 61

ANNUAL—
Report on criminal administration 84-86
Statements, explanations .. . 87
Statement No. 1 (Judicial), Classification of Courts and Jurisdictions Their outturn of work, cost, &c 88-89
Statement No 2 (Judicial), Offences reported and persons tried, convicted, and acquitted of each offence 90-92
Statement No 3 (Judicial), General result of criminal trials in the tribunals of various classes in the district 94
Statement No. 4 (Judicial), Punishments inflicted by various criminal tribunals in the district .. 96 97
Statement No 5 (Judicial), Result of appeals and revision in criminal cases in the district 98
Statement No 11 (Judicial), Employment of juries and assessors in the Civil and Criminal Courts of the province ... 99

PAGE.

APPEALS—
Book of— 68
Evidence to be recorded clearly and legibly, otherwise copies to accompany record in—to High Court 32
In what cases—not to be forwarded to High Court by Jail Superintendents ... 14
List of criminal—heard by the Sessions Judge 12
Result of—to Sessions Court .. .. ib.
Statement showing result of—and revision in criminal cases 77, 82, 98
To be accompanied by copy of judgment and not of sentence merely ... 11
To High Court from prisoners in jail 13-14
To Sessions Courts from prisoners in jail 11-12
Table showing—from sentences and orders of Courts of Original Jurisdiction preferred in the district, disposed of and pending in the year under report, as compared with the previous year 86
Table showing the number of—preferred to the Court of Session or to the Magistrate of the district, from the subordinate criminal courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided... 86

APPELLATE—
Supplementary evidence before—Court 14-15

APPLICATIONS—
Rules regarding—for copies of papers 66-67

ASSESSORS—
Jurors and— 9-10
Statement showing employment of juries and—in Civil and Criminal Courts ... 99

ATTENDANCE—
Daily register of—of witnesses 35-36, 68
Statement showing number of witnesses and their— 85

AWARD—
Possessory—under section 530, Criminal Procedure Code 47

AUTHORITY—
Local—not to grant copies of letters, &c, from the Sudder Court 67
Limits of—of police in certain cases 5

AVERAGE DURATION OF CASES—
Monthly statement showing— 71

B.

BEHAVIOUR—
Security for good— 46-47

BOOK OF APPEALS 68
BOOK OF REFERENCES FROM OTHER DISTRICTS ... ... ib.

C.

CALENDAR—
Of accused persons for trial before the Court of Session 75
Of accused persons tried or brought before the Court of Session 77-78

CAPITAL SENTENCE—
Returns to warrants of— 23

CERTIFICATES—
Mookhtars, &c., to renew— 61

CHARGE—
Of perjury 43
Prisoners accused under more than one head of— 93
Prosecutions for false—s 48-49

CIVIL PROCESS—
Witnesses arrested under a warrant to be treated as persons under—... 40

PAGE.

CIVIL SURGEON—
Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil Surgeon 39

CLASSIFICATION—
Of Courts and Jurisdictions—Their outturn of work, cost, &c 89

COMMITMENT—
Examination of accused prior to— . 6
Made whilst Sessions are pending ... 8
Sessions Courts' remarks on— 8-9
Sessions Court statement D, part II of— .. 76
To High Court of European British subjects 1 4
To Sessions When several persons are accused of the same offence, and the case is one for the Sessions, all should be committed 7-8
Warrant of— 17
Warrant of—for transportation . .. 17-18
What papers to be included in record of— . . 7

COMMITTING OFFICER—
Form of letter to be sent by—through the Magistrate of the district to the Judge 74

COMPILATION—
Of medico-legal reports 65-66

COMPLAINT—
Register of criminal— 67

CONFESSIONS—
Recording of— 38-39

CONVICTS—
Warrant of imprisonment in case of military— 22

CONVICTIONS—
Explanations as to disproportion or apparent disproportion of acquittals to— 83
In—of culpable homicide, exceptions under section 300, Penal Code, to be specifically noted 49 50
Of military employé to be intimated to Military Department ... 45
Register of—of heinous offences 44 45

COPY—
Evidence to be recorded legibly and clearly, otherwise—to accompany record in appeals to High Court 32
Of exhibits 67
Appeals to be accompanied by—of judgment and not of sentence merely 11
Of letters, &c , from the Sudder Court not to be granted by local authorities ... 67
Rules regarding applications for—of papers .. . 66-67

COPYING—
Rates 66

COURT—
In what cases appeals not to be forwarded to High—by Jail Superintendents . . 14
Evidence to be recorded legibly and clearly, otherwise copy to accompany record in appeal to High— 32
Result of appeals to Sessions— 12
Copy of letters, &c , from the Sudder—not to be granted by local authorities 67
Supplementary evidence before Appellate— . 14-15
Sessions—s' remarks on commitment .. 8-9
Appeals to High—from prisoners in jail . 13-14
Appeals to Sessions—from ditto 11-12
Calendar of accused before the—of Session 75
Sessions—s' statement D, part II, Commitments .. 76
Calendar of accused persons tried or brought before the—of Session .. 77-78
Annual statement I, Classification of—and jurisdictions .. 88-89
Statement showing employment of juries and assessors in Civil and Criminal—s 90
Commitment to High—of European British subjects 1 4
Diary of witnesses in attendance in Magistrates'—s 36
High—letter regarding the recording of confessions . 38-39

PAGE.

COURT—(*Continued*)
Monthly returns to Magistrates and Judges from subordinate—s .. 69, 70
Blank quarterly statements not to be submitted to High— .. 72
Responsibility of Magistrates and Judges as to control over subordinate—s 84
Magistrates'—s Fees for process 54-56
Ditto District establishment of peons .. 57-58
Holidays how far available for criminal—s . . 59-60
Civil—holidays .. 60

CRIMINAL—
Annual report on—administration 84-86
List of—appeals heard by Subordinate Judges . 12
Register of—complaints 67
Register of—s convicted of heinous offences 44-45, 68
Arrangement and disposal of records of—cases 63-64
Statement showing the result of appeal and revision in—cases 77, 82, 98

CULPABLE HOMICIDE—
In convictions of—exceptions under section 300, Penal Code, to be specifically noted 49-50
Hurt, grievous hurt,— 50

CURRENCY OF SENTENCE—
On escaped prisoners 24

D.

DEATH WARRANT—
How to provide for date of execution 22
Form 18

DEPARTMENT—
Convictions of military employé to be intimated to Military— ... 45

DETENTION OF WITNESSES—
Mode of calculating— 36-37

DIARY—
Of witnesses in attendance in Magistrates' Courts 36, 68

DISTRICT ESTABLISHMENT OF PEONS (Magistrates' Courts) 57-58

DUSSERAH VACATION— 59-60

E.

ENQUIRY—
Police—. Limits of authority of police in certain cases 5

ESTABLISHMENT—
District—of peons. Magistrates' Courts 57-58

EUROPEAN BRITISH SUBJECTS—
Under commitment to High Court 1-4

EVIDENCE—
Recording 32-33
Recording—in warrant cases 37
Supplementary—before Appellate Court 14-15
To be recorded legibly and clearly, otherwise copies to accompany records in appeal to High Court 32

EXAMINATION—
Of accused prior to commitment 6
Prompt—of witnesses after their appearance 34-35
Witnesses 33-34

PAGE.

EXCEPTIONS—
Under section 300, Penal Code, in convictions of culpable homicide to be specifically noted 49-50

EXECUTION—
Death warrant how to provide for date of— 22
Of sentence 16

EXHIBITS—
Copies of 67

EXPLANATION—
As to disproportion or apparent disproportion of acquittals to convictions ... 83
Of the annual statements 87

F.

FALSE CHARGES—
Prosecution of— 48-49

FEES—
Process—. Magistrates' Courts 54-56

FINDING—
In case of acquittal on ground of being lunatic 41-43

FINES—
Levy of— 23-24
Warrant for levy of— 18-19

FORMS—
Annual statement No. 1, Classification of Courts, &c. 88-89
Book of appeals 68
Book of references from other districts . .. . ib.
Calendar of accused persons tried or brought before the Court of Session ... 77-78
Death warrant 18
District Magistrates' calendar of accused persons for trial before the Court of Session 75
Judicial statement 2. Offences reported and persons tried, convicted, and acquitted for each offence 90
Judicial statement 3. General result of criminal trials in the tribunals of various classes 94
Judicial statement 4. Punishments inflicted by various criminal tribunals . 96-97
Judicial statement 5. Result of appeals and revisions in criminal cases ... 98
Judicial statement 11. Employment of juries and assessors in Civil and Criminal Courts 99
Letter of commitment to be sent through the Magistrate of the district to the Judge 74
Miscellaneous matters 68
Prescribed for Registers 67-68
Register—Attendance of witnesses 30, 68
——— Criminal complaints 67
——— Heinous offences 44-45, 68
——— Lawaris property 62, 68
——— Record-keepers'— 68
——— Sentence warrants 21, 68
——— Unclaimed property 62, 68
Statement D, part I, Magistrates'. Offences reported and persons tried, convicted, and acquitted 70. 75
Statement D, part II, Magistrates'. Miscellaneous cases ... 76
Statement D, part II, Sessions Courts'. Commitments ... ... ib.
Statement E. Result of appeal and revision in criminal cases 77, 82
Statement. Number of offences ascertained to have been committed in year under report as compared with previous year (Original Jurisdiction) 84
Statement. Number of persons brought to trial during the year as well as those convicted, acquitted, or discharged, and remaining under trial (Original Jurisdiction) 85
Statement. Number of witnesses and their attendance ... ... ib.
Table. Appeals from sentences and orders of Courts of Original Jurisdiction, preferred, disposed of, and pending in the year under report, as compared with the previous year. (Appellate Jurisdiction) 86

PAGE.

FORMS—(*Continued.*)
Table. Number of appeals preferred to the Court of Session, or to the Magistrate of the district, from the Subordinate Criminal Courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided. (Appellate Jurisdiction) 86
Warrant Commitment 17
Ditto. Commitment for transportation .. ... *ib.*
Ditto. Commitment of European British subject 4
Ditto. Levy of fine 18-19

G.

GOOD BEHAVIOUR—
Security for— 46-47

GOVERNMENT—
Proceedings of the—of India in regard to sentences of transportation ... 26-30

GRIEVOUS HURT—
Hurt—Culpable homicide 50

H.

HEINOUS OFFENCES—
Register of convictions of— 44-45, 68

HIGH COURT—
Appeals from prisoners in jail 13-14
Blank quarterly statement not to be submitted 72
Commitment of European British subjects 1-4
Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeal 32
In what cases appeals not to be forwarded to—by Jail Superintendents 14
Letter regarding the recording of confessions 38-39

HOLIDAYS—
Civil Courts' 60
How far available for Criminal Courts 59-60

HOMICIDE—
Hurt, grievous hurt, culpable— 50
In convictions of culpable—exceptions under section 300, Penal Code, to be specifically noted 49-50

HURT 50

I.

INDEX—
Numbers to prisoners 93

INDIA GOVERNMENT—
Proceedings in regard to sentences of transportation 26-30

INSTRUCTIONS—
On the annual judicial statement 3 95
Do. do. do. 4 98
Do do. do. 11 99
Do. Quarterly statement D (Criminal) 83
Do. Whipping Act (General) 50-54

INTERPRETERS—
Oath and affirmation 31

INTESTATE PROPERTY 61-63

J.

PAGE

JAIL—

Appeals from prisoners in—to High Court 13-14
Ditto ditto —Sessions Court 11-12
In what cases appeals not to be forwarded to High Court by—Superintendents 14

JUDGE—

Form of letter to the—by Committing Officer 74
List of criminal appeals heard by Sessions— ... 12
Monthly returns to Magistrate and—from Subordinate Courts .. 69-70
Responsibility of Magistrate and—as to control over Subordinate Courts .. 84
Sessions—to record his opinion of the work of his subordinates when quitting a district towards the end of year 60-61

JUDGMENT—

Appeals to be accompanied by copy of—and not of sentence merely ... 11

JURISDICTION—

Processes in other—to be easily legible 58
Ditto ditto with different language to be accompanied by translation into that language or into English 58-59
References in revisional— 15-16

JURORS—

And Assessors 9 10
Oath and affirmation 31
Statement showing employment of—and Assessors in Civil and Criminal Courts 99

JURY—

Charge to— 98

L.

LANGUAGE—

Processes in other jurisdiction with different—to be accompanied by translation into that—or into English 58-59
Warrants of imprisonment .. 17

LAWARIS—

Register of—property 62, 68

LETTER—

Copy of—s, &c, from the Sudder Court not to be granted by local authorities 67
Form of—to be sent by Committing Officer through the Magistrate of the district to the Judge .. 74
High Court's—regarding the recording of confessions 38, 39
Sessions Judge's— ditto ditto ditto 38
To Superintendent of Stationery regarding Magistrates' and Judges' monthly returns 69

LEVY OF FINES— 23, 24
Warrant for— 18 19

LIST—

Of criminal appeals heard by the Sessions Judge 12

LUNATIC—

Finding in case of acquittal on ground of being— 41 43

M.

MAGISTERIAL OFFICERS—

Employed executively 84

PAGE.

MAGISTRACY—
Calendar of accused persons for trial before the Court of Session 75
Diary of witnesses in attendance in the—'s Court 36
District establishment of peons 57-58
Form of letter to be sent by committing officers through the District—to the Judge 74
Monthly returns to—s and Judges from Subordinate Courts .. 69-70
Process fees. —s' Courts 54-56
Responsibility of—s and Judges as to control over Subordinate Courts ... 84
Statement. Miscellaneous cases 76
Ditto. Offences reported and persons tried, convicted, and acquitted ... 70, 75
Summonses on medical subordinates of district to be served through District—and intimated to Civil Surgeon 39

MEDICAL SUBORDINATES OF DISTRICT—
Summonses on—to be served through District Magistrate and intimated to Civil Surgeon 39

MEDICO-LEGAL—
Compilation of—reports 65-66

MILITARY EMPLOYE—
Convictions of—to be intimated to Military Department 45

MILITARY CONVICTS—
Warrants of imprisonment in case of— 22

MISCELLANEOUS—
Register of—matters 68
Statement of—cases 76

MONTHLY RETURNS—
To Magistrates and Judges from Subordinate Courts 69-70

MONTHLY STATEMENT—
Average duration of cases 71

MOOKHTARS—
Discretion of Court as to—appearing in defence 5
To renew certificates 61

N.

NAMES—
Spelling prisoners'— 9

NAZIRS—
Scale of—, and peons' pay 56-57

NOTES—
On judicial statement No. 2 90-91

NUMBERS—
Index—to prisoners 93

O.

OATHS—
For witnesses, interpreters, and jurors 31

OFFENCES—
Register of convictions of heinous— 41-45, 68
Schedule of—under Act XLV of 1860 91-92
Statement of—reported and of persons tried, convicted, and acquitted .. 70, 75, 90
Statement. Number of—ascertained to have been committed in year under report, as compared with previous year 84

PAGE.

OFFICERS—
Form of letter to be sent by Committing—through the District Magistrate to the Judge 74
Magisterial—employed executively ... 84
Summonses on police—to be served through District or Assistant Superintendent 39, 40

P.

PAPER—
Rules regarding applications for copies of—s 66 67
Warrants of imprisonment for more than two years to be on superior— 22

PEONS—
District establishment of— 57-58
Scale of nazirs' and—' pay 56-57

PERJURY—
Charge of— 43

POLICE—
Limits of authority of—in certain cases 5
Summonses on—officers to be served through District or Assistant Superintendent 39-40

PORT BLAIR—
Extract from the Proceedings of the Government of India in the Home Department (—) 26-30

POSSESSORY AWARD—
Under section 530, Criminal Procedure Code 47

PRISONERS—
Accused under more than one head of charge 93
Appeals to High Court from—in jail 13-14
Appeals to Sessions Court from—in jail 11-12
Currency of sentence on escaped— 24
Intimation of result of appeals to Sessions Court to—in jail 12
Index numbers to— 93
Residence of—to be noted in warrants of imprisonment 20
Separate warrants for each several— 19, 20
Spelling of—' names 9

PROCEEDINGS—
Extract from the—of the Government of India in regard to sentence of transportation 26 30

PROCESS—
Fees for—(Magistrates' court) 54-56
In other jurisdiction to be easily legible 58
In other jurisdiction with different language to be accompanied by translation in that language or into English 58 59
Witnesses arrested under a warrant to be treated as persons under civil— ... 40

PROPERTY—
Intestate 61, 63
Register of unclaimed and lawaris— 62, 68

PROSECUTIONS—
For false charges 48-49
Of public servants 46

PUBLIC—
Prosecutions of—servants .. ... ib

PUNISHMENTS—
Statements showing—inflicted by various criminal tribunals 96-97

Q.

QUARTERLY STATEMENT—
Blank—s not to be submitted to High Court 72
Calendar of accused persons. Magistrates' and Sessions Judges'— 75, 76, 78

QUARTERLY STATEMENTS—(*Continued.*) PAGE.

Commitments 76
Instructions on—D 83
Instructions regarding the preparation of— 80-82
Miscellaneous cases—D, part II, Magistrates'... 76
Offences reported, persons tried, convicted, and acquitted 75
Result of appeal and revision 77, 82
Sessions—No. 3 78-79
Sessions—s D and E 72-74

R.

RATES—
For copying 66

RECOGNIZANCES— 40-41

RECORD—
Arrangement and disposal of—in criminal cases 63-64
Evidence to be recorded legibly and clearly, otherwise copies to accompany—in appeal to High Court 32
What papers to be included in—of commitment 7

RECORDING—
Evidence 32-33
Evidence in warrant cases 37
Of confessions 38-39
Sentences 43

RECORD-KEEPER'S REGISTER— 68

REFERENCES—
Book of—from other districts 68
In revisional jurisdiction 15-16

REFORMATORIES—
In absence of—sentences under section 318 not to be awarded 25

REGISTERS—
Attendance of witnesses (daily) 35, 36, 68
Book of appeals 68
Book of references from other districts ... ... *ib.*
Convictions of heinous offences 44-45, 68
Criminal complaints 67
Miscellaneous matters 68
Record-keeper's— ... ... *ib.*
Sentence warrants 21, 68
Unclaimed and lawaris property 62, 68

REMARKS—
Sessions Courts'—on commitment 8, 9

RELEASE—
Warrant unnecessary 22

REPORTS—
Annual—on criminal administration 84-86
Compilation of medico-legal 65-66

RESOLUTION—
Government of India—in regard to sentences of transportation 26-30

RESPONSIBILITY—
Magistrates' and Judges'—as to control over Subordinate Courts 84

RESULT—
Of appeals to Sessions Court 12
Statement,—of appeal and revision in criminal cases 77, 82, 98
Do. of criminal trials in the tribunals of various classes 94

RETURNS— PAGE.
Monthly—to Magistrates and Judges from Subordinate Courts . 69, 70
Warrants of capital sentence 23

REVENUE AGENTS—
And mookhtars to renew certificates 61

REVISION—
Statement showing the result of appeal and—in criminal cases 82

REVISIONAL JURISDICTION—
References in— 15-16

RULES—
For the examination of witnesses 34
Regarding applications for copies of papers 66-67
Do. the arrangement and disposal of records in criminal cases ... 64 65

S.

SCALE—
Of nazirs' and peons' pay 56 57

SCHEDULE—
Of offences under Act XLV of 1860 ... 91-92

SECURITY—
For good behaviour 46 47

SENTENCE—
Appeals to be accompanied by copy of judgment and not of—merely ... 11
Currency of—on escaped prisoners 24
Date of execution of—in death warrants 22
Execution of— 16
In absence of reformatories—under section 318, Criminal Procedure Code, not to be awarded 25
Proceeding of the India Government in regard to—of transportation ... 26-30
Recording— 43
Register of—warrants 21, 68
Returns to capital—warrants 23
Table showing appeals from—and orders of Courts of Original Jurisdiction ... 88
Transportation 25-26

SESSIONS—
A—Judge quitting a district towards the end of a year is required to record his opinion on the work of his subordinates 60-61
Appeals to—Court from prisoners in jail ... 11-12
Commitments made whilst—are pending 8
Magistrates' calendar of accused persons before the—Court ... 75
Remarks of—Courts on commitment 8-9
Result of appeals to—Court 12
——— Judges' calendar of accused persons tried or brought before the—Court ... 77, 78
Statement D, part II, of commitments 79
When several persons are accused of the same offence, and the case is one for the —, all should be committed ... 7-8

SERVANTS—
Prosecution of public— ... 46

STATEMENTS—
Annual—Explanations 87
Appeals from sentences and orders of Courts of Original Jurisdiction ... 86
Blank quarterly—not to be submitted to the High Court ... 72
Magistrates'—D, parts I and II and E 75-76, 77-82
Sessions—D and E 72-74
D, Of offences reported and of persons tried, &c 70, 75, 90
Average duration of cases (monthly) 71
Sessions quarterly—No. 3 78-79
Quarterly— 80-82
No. 5 Result of appeals and revision in criminal cases 98

STATEMENTS—(*Continued.*) PAGE.

Number of offences ascertained to have been committed during the year under report 84
Number of persons brought to trial during the year, convicted, acquitted or discharged, and remaining under trial 85
Number of witnesses and their attendance ... ... *ib.*
Annual—No. I, Classification of courts, &c. 88-89
No. 3, Result of criminal trials in the tribunals of various classes 94
No. 4, Punishments inflicted by various criminal tribunals 96-97
Employment of juries and assessors in the Civil and Criminal Courts ... 99

SUPERINTENDENT—
In what cases—s of Jails are not to forward appeals to High Court 14
Summonses on police-officers to be served through District—or Assistant— ... 39-40

SUBORDINATE—
A Sessions Judge quitting his district towards the end of a year is required to record his opinion of the work of his— 60-61
Responsibility of Magistrates and Judges as to control over—Courts ... 84
Summonses on medical—of district to be served through District Magistrate and intimated to Civil Surgeon 39

SUDDER COURT—
Copies of letters, &c., from the—not to be granted by local authorities ... 67

SUMMONSES—
On medical subordinates of district to be served through District Magistrate and communicated to Civil Surgeon 39
On police-officers to be served through District or Assistant Superintendent ... 39-40

SUPPLEMENTARY EVIDENCE—
Before Appellate Court 14-15

SURGEON—
Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil— 39

T.

TRANSLATION—
Processes in other jurisdiction with different language to be accompanied by—in that language or in English 58, 59

TRANSPORTATION—
Sentences of— 25-30
Warrant of commitment for— 17-18

TRIALS—
Sessions'—. Commitments made whilst Sessions are pending 8

U.

UNCLAIMED PROPERTY—
Register of— 62, 68

V.

VACATION—
Dusserah 59-60

W.

WARRANTS—
Commitment 17
Commitment of an European British subject . . . 4
Death 18
Death—how to provide for date of execution 22
Imprisonment for more than two years to be on superior paper ... ... *ib.*
Imprisonment in case of military convicts . . .. *ib.*

WARRANTS—(*Continued*) PAGE.

Imprisonment—Language 17
Levy of fines 18-19
Recording evidence in—cases 37
Register of—(sentence) 21, 68
Release—unnecessary 22
Residence of prisoners to be noted in—of imprisonment 20
Returns to—of capital sentence 23
Separate—for each several prisoner 19-20
Transportation 17-18
Witnesses arrested under—to be treated as persons under civil process 40

WHIPPING—
General instruction on the—Act 50-54

WITNESSES—
Arrested under a warrant to be treated as persons under civil process . 40
Daily register of—attendance 35, 36, 68
Diary of—in attendance in Magistrates' Courts 36, 68
Examination of— 33-34
Mode of calculating detention of— 36-37
Oath and affirmation 31
Particulars for identifying persons examined as— 32
Prompt examination of—after their appearance 34-35
Statement showing the number of—and their attendance 85

XIII/40

PLEADERS, MOOKHTARS, &c.

PAGE.

[See volume of Civil Orders.]

PROCESSES.

Table of fees for processes (High Court rules under sec. 20, Court Fees' Act) 54-55
Scale of nazirs' and peons' pay (sec. 20, Court Fees' Act) 56
District establishment of peons (sec. 22, Court Fees' Act) 57
Processes in other jurisdictions to be easily legible. Also, where necessary, to be accompanied by translation 58

MISCELLANEOUS.

Holidays how far available for criminal courts—Dusserah vacation ... 59
Civil Court holidays 60
A Sessions Judge quitting a district towards the end of a year is required to record his opinion of the work of his subordinates 60
Mookhtars, &c., to renew their certificates 61
Intestate property 61
Form No. 1.—Register of unclaimed property disposable under clause 16, section 16, Regulation XX of 1817 (now secs. 25-27, Act V of 1861) 62
" " 2.—Register of lawaris property disposable under section 7, Regulation V of 1799 62

RECORDS.

Arrangement and disposal of records of criminal cases 63-65
Compilation of medico-legal reports 65
COPIES, rules as to copying rates, procedure, &c.... 66-67

FORMS FOR REGISTERS.

No. 1.—Register of criminal complaints 67
" 2.—Record-keeper's register 68
" 3.—Book of appeals 68
" 4.—Book of references from other districts 68
" 5.—Miscellaneous matters 68
Register of criminals convicted of heinous offences 68
Register of attendance of witnesses 68
Registers of unclaimed and lawaris property 68
Register of sentence warrants 68

PERIODICAL RETURNS.

MONTHLY RETURNS.

Monthly returns to Magistrates and Judges from subordinate cou
Monthly statement showing average duration of cases

QUARTERLY RETURNS.

Blank quarterly statements not to be submitted
Sessions statements D, E ... ...
Form of a letter to be sent by commit
of the district to the Judge

PAGE.

Form of District Magistrate's Calendar. Statement D, part I (Magistrates) statement of offences reported, and of persons tried, &c., in the district of—, during the quarter of— 75

Statement D, part II, miscellaneous cases 76

Statement D, part II, Court of Sessions, statement of commitments ... 76

Statement E, showing the result of appeal and revision in criminal cases ... 77

Sessions statement No. (after each Sessions) being calendar of accused persons committed or remaining for trial 77

Sessions quarterly statement No. 3 (formerly III, IV) 78

Calendar of accused persons tried or brought before the Court of Sessions... 78

Explanations on Sessions statement No. III 79

General explanations on quarterly statements 80-82

Form of quarterly statement E, showing the result of appeal and revision in criminal cases 82

Instructions on quarterly statement D 83

Explanation as to disproportion or apparent disproportion of acquittals to convictions 83

Responsibility of Magistrate and Judge as to control over subordinate courts 84

Magisterial officers employed executively. Time thus occupied how to be dealt with in returns 84

ANNUAL RETURNS.

Annual report on criminal administration statement of number of offences ascertained to have been committed in the year under report as compared with previous year. Statement showing the number of persons brought to trial, &c. 84-85

Statement showing the number of witnesses and their attendance ... 85

Table showing appeals from sentences and orders of Courts of Original Jurisdiction 86

Table showing the number of appeals preferred to the Court of Sessions, &c. 86

Explanations of the annual statements 87

Tabular classification of courts and jurisdictions, their outturn of work, cost, &c., statement No. 1 88

Statement No. 2 90

Explanations and orders on the above 90-91

Schedule of offences under Act XLV of 1860 91-92

[illegible]er accused under more than one head of charge 93

[illegible]mbers to prisoners 93

[illegible] showing the general result of criminal trials 94

[illegible] above 95

[illegible] punishments inflicted by various tribunals, &c. ... 96-97

[illegible] 98

[illegible] appeal and revision in criminal cases ... 98

[illegible] Juries and Assessors in Civil and [illegible] 99

[illegible] 99

CHRONOLOGICAL INDEX TO CIRCULAR ORDERS AND MEMORANDA, GENERAL LETTERS, &c.

(CRIMINAL.)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	Subject.	Page.
C. O.	1796	9	30th November	Commitments made whilst sessions are pending	8
	1804	34	19th June ...	Directing how warrants are to be returned after execution of sentence ...	23
C. O.	1808	49	13th April ...	Regarding the trial and commitment of prisoners by the several Judges of Circuit for the division during their residence at each zillah	8
C. O.	1833	135	22nd February	Spelling prisoners' names...	9
C. O.	1835	167	15th May ..	Form in which register of sentence warrants is to be maintained	21
C. O.	1837	3	15th December	Unclaimed property not to be confounded with the property of intestates. "Lawaris"	61-63
C. O.	1838	8	23rd March ...	Judges' Courts not to be closed for the dispatch of criminal business during the Dusserah and Mohurrum vacations except on close holidays	59-60
C. O.	...	28	7th December	A Sessions Judge quitting a district towards the end of a year to record his opinion of his subordinates	60
C. O.	1842	103	25th January 6th May	A Sessions Judge quitting a district towards the end of a year is required to record his opinion of the work of his subordinates	60-61
C. O.	1843	132	7th April ...	Rules regarding application for copies of papers	66-67
C. O.	...	137	19th May ...	Appeals to High Court	13
C. O.	...	144	16th August ...	Forms of registers...	68
C. O.	...	151	24th November	Forms for cases of unclaimed property and property of intestates	61-62
C. O.	1844	160	19th April ...	Copies of letters, &c., from the Sudder [High] Court not to be granted by local authorities	67
C. O.	1845	194	22nd January...	Prompt examination and daily register of attendance of witnesses	35
C. O.	1849	26	20th June ...	Appeals to High Court	

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	SUBJECT.	Page.
C. O.	1851	57	25th April ...	Estates of deceased officers or other military men—Administration in whom vested	63
	1857	20	20th August ...	Rules for the arrangement and disposal of records of criminal cases	64-65
C. O.	1859	8	15th „ ...	Separate warrant for each several prisoner	19-20
C. O.	1860	72	8th February...	Mode of calculating detention of witnesses	36
C. O.	1861	85	5th August ...	Rates for copying	66
	1862	2	13th „ ...	Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeals to High Court ...	32
C. O.	...	6	6th May ...	Appeals to High Court	13
C. O.	...	98	21st „ ...	Explanation as to disproportion, or apparent disproportion, of acquittals to convictions	83
C. O.	...	100	27th „ ...	When several persons are accused of the same offence, and the case is one for the sessions, all should be committed...	7
C. O.	1863	5	5th February...	In convictions of culpable homicide exceptions under section 300, Penal Code, to be specifically noted	49-50
	...	7	11th March ...	In case of jury trials, Sessions Judge to note in column of remarks whether he concurs in the jury's verdict ...	77
	...	10	16th April ...	Possessory award under section 530, Criminal Procedure Code	47
	...	13	8th June ...	How warrants are to be returned after execution of sentence	23
	...	13	13th „ ...	Returns to warrants of capital sentence.	23
	...	18	15th July ...	References in revisional jurisdiction ...	15-16
	...	19	15th „ ...	Prosecution for false charges, section 211, Penal Code	48-49
	1864	2	8th April ...	The Whipping Act—General instructions	50-53
	...	5	6th May ...	European British subjects under commitment to High Court	1
	...	6	16th „ ...	Rules for the examination of witnesses...	33-34
	...	8	22nd June ...	Levy of fines	23-24
	...	9	30th „ ...	Law as to lunacy in criminal trials ...	43

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year	No.	Date.	SUBJECT.	Page.
C. O.	1864	12	27th July ...	Separate warrant for each several prisoner	19
	...	13	28th " ...	Examination of accused prior to commitment	6
	...	14	5th August ...	Finding in case of acquittal on ground of being lunatic	41
	...	15	11th " ...	Recognizances	40-41
	...	16	20th " ...	Recording sentences	43
	...	19	17th September	Particulars for identifying persons examined as witnesses	32
	...	20	4th October ...	Prosecution of public servants	46
	...	21	22nd November	Witnesses arrested under a warrant to be treated as persons under civil process	40
	...	22	10th December.	Finding in case of acquittal on ground of being lunatic	41
	1865	4	23rd June ...	Jurors and assessors	9-10
	...	5	5th July ...	Register of convictions of heinous offences	44-45
	...	6	17th " ...	Arrangement and disposal of records of criminal cases	63-64
C. O.	...	10	20th November.	Sentence warrants to be addressed to officers in charge of Jails	20
	...	11	20th " ...	Supplementary evidence before Appellate Court...	14-15
	...	12	27th " ...	Prompt examination of witnesses after their appearance...	34-35
C. O.	1866	3	9th February	Charge of perjury	43
C. O.	...	8	6th August ...	Regarding the commitment of European British subjects for trial before the High Court	3-4
C. O.	...	9	3rd " ...	Sentences of transportation	25
C. O.	...	11	1st October ...	Register of warrants to be properly kept up	21
	...	13	5th December	Regarding the commitment of European British subjects	4
	...	14	6th " ...	Summonses on police-officers to be served through District Superintendent or Assistant Superintendent	39-40
C. O.	1867	3	25th March ...	Warrants for prisoners	19-20
C. O.	...	5	12th July ...	Sessions quarterly statement No. 3 ...	78
	...	9	7th August ...	Appeals to High Court from prisoners in jail	13-14

CHRONOLOGICAL INDEX.—(*Continued*)

Whether C. O., or C. M., or G. L	Year	No.	Date.	SUBJECT	Page
C. O.	1868	1	10th January	Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil Surgeon	39
	...	2	6th April ..	Whipping Act	53-54
	..	3	16th „ ..	Blank quarterly statements not to be submitted to High Court ..	72
		4	2nd „ (Civil)	Holidays how far available for Criminal Courts	59
		4	6th May ..	Sessions statements D and E	72-77-78
	...	5	28th „ ..	Appeals to High Court	13-14
	...	5A	7th September	Forms prescribed for register of criminal complaints	67
C O.	...	6	9th „ ..	Discontinues submission of sessions quarterly statement No. 5 ..	78
	...	7	10th „ ..	Residence of prisoners to be noted in warrants of imprisonment .. .	20
	...	8	27th November	When a person is charged with several offences and convicted of one only, the head of charge on which he has been convicted to be indicated by red underlining	77
		9	15th December .	Appeals from orders of District Superintendent of Police which are heard by Magistrate in his executive, not judicial, capacity, are to be excluded from returns to High Court; so also fines on ministerial officers for neglect of duty are not to be entered in Magistrates' statements	83
C. O.	1869	4	21st May ..	References in revisional jurisdiction ...	15
	..	6	2nd July ..	Appeals to Sessions Courts from prisoners in jail	11-12
C. O.	...	7	12th August ...	Records not to be sent to High Court when no second appeal lies . ..	14
	..	8	25th „ ..	In what cases appeals not to be forwarded to High Court by Jail Superintendent	14
	...	9	6th September .	Hurt, grievous hurt, culpable homicide, sections 323, 325, 302, Penal Code .	50
	...	10	22nd „	Compilation of Medico-Legal Reports	65 66
C. O.	1870	1	1 th January ...	Sentences of transportation	26
		6	22nd February	Separate warrant for each several prisoner	19
	...	7	11th March ...	Index numbers to prisoners ...	93

CHRONOLOGICAL INDEX —(*Continued*)

Whether C O, or C M, or G. L	Year	No	Date	Subject	Page.
C. M.	1870	7	17th December	Monthly returns to Magistrates and Judges from subordinate courts	69 70
		10	12th July	New form of sessions statement No 3 to be submitted after each sessions .	78, 82
		13	29th August	Discretion of Court as to Mukhtars appearing in defence	5
		14	3rd December	Sessions Courts' remarks on commitment	8 9
C O		31	4th Nov, Civil	Quarterly returns	69, 78, 80
		32	8th „	Explanations on the annual statements	87-89
		32	8th „	Judicial statement 11, showing employment of juries and assessors in civil and criminal courts ..	99
C O	1871	1	11th January	Each criminal court to keep up its own register of warrants according to the form laid down in C O 167, dated 15th May 1835	21
C O		1	11th „	Form in which register of sentence warrants is to be maintained	72
	...	3	2nd February	Judicial statement No 2	90 92 95
C O		4	2nd „ ...	Annual report on criminal administration	84 86
	...	6	17th July ..	Conviction of any military employé to be intimated to Military Department of the Government of India	45
	..	7	20th „	Police inquiry —Limits of authority of police in certain cases .	5
		8	27th „	Responsibility of Magistrates and Judges as to control over subordinate courts ..	84
C O	1872	1	23rd January	Commitment—What papers to be included in record of	7
C. O.	..	2	18th March	Result of appeals to Sessions Court Intimation to prisoners in jail ..	12
		3	25th July	Processes in other jurisdiction with different language to be accompanied by translation into that language or into English	58-59
	...	4	10th August	Evidence—Recording of— ...	32
C O	1873	1	3rd January	Warrants of imprisonment for more than two years to be on superior paper	22
C M.	...	1	8th „	Form prescribed for monthly statement showing average duration of cases ..	71 95
C. O	...	2	18th „ .	Release warrant unnecessary ..	22
C M	.	2	28th February	Statement showing average duration of cases	71

CHRONOLOGICAL INDEX.—(*Continued.*)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	SUBJECT.	Page.
C. O.	1873	5	11th March ...	Forms of warrant (1) for the execution of capital sentences, (2) for sentences of transportation, (3) for other sentences, and (4) for the levy of fine	16
C. M.	...	5	10th June ...	Magisterial officers employed executively	84
C. M.	...	6	15th July ...	Security for good behaviour	46-47
C. M.	...	7	30th „ ...	Confessions—Recording of	38
C. O.	...	7	10th April ...	Instructions on quarterly statement D, criminal	83
C. O.	...	8	19th May ...	Explanation as to the disproportion, or apparent disproportion, of acquittals to convictions	83
C. O.	...	8	19th August ...	Mooktars, &c., to renew certificates ...	61
	...	9	15th July ...	Currency of sentence on escaped prisoners	24
C. O.	...	10	27th August ...	Language for warrants of imprisonment	17
	...	11	10th September	Quarterly statements D and E to be submitted in revised form	80-82
C. O.	...	12	7th June, Civil	Oaths and affirmations, forms prescribed	31
C. O.	...	12	28th November	Warrants of imprisonment in case of military convicts	22
C. M.	1874	1	12th February	Work done by Honorary Magistrates to be shewn in statement D, Part I ...	81
C. M.	...	2	20th May ...	Reformatories. In absence of—sentences under section 318 not to be awarded ...	25
C. O.	...	2	8th June ...	Appeals to be accompanied by copy of judgment, and not of sentence merely	11
C. M.	...	3	3rd „ ...	Statement D, Part II, Court of Session...	76
C. M.	...	4	20th „ ...	Recording evidence in warrant cases ...	37
C. O.	...	13	12th May, Civil	Fees for processes (Magistracy courts) ...	54-56
	...	13	12th „ ...	Scale of nazirs' and peons' pay	56-57
	...	13	12th „ ...	District establishment of peons (Magistracy courts)	57-58
C. O.	1874	4	23rd July ...	In cases of acquittals, observations regarding the propriety of the commitment to be discontinued	77
C. O.	1875	1	5th February...	Sentences of transportation	26-28
C. M.	...	1	1st March ...	Register of criminals convicted of heinous offences.—Rules on the subject contained in C. O. No. 5 of 5th July 1865, to be duly observed	45

CHRONOLOGICAL INDEX.—(*Concluded.*)

Whether C. O., or C. M., or G. L.	Year.	No.	Date.	SUBJECT.	Page.
C. M.	1875	2	5th March ...	Charge to jury	10
C. O.	...	3	3rd June ..	Prisoner accused under more than one head of charge	90-93
	...	4	17th August ...	Sentences of transportation ...	28-30
	...	5	24th November.	Sentences of transportation ...	30
C. O.	...	6	2nd June, Civil	Copies of exhibits	67
C. M.	1876	A	15th January ...	Judicial statement No 2. (Statement of offences reported and of persons tried, convicted, and acquitted, &c.)	90
C. M.	...	A	15th „ ...	Judicial statement No. 3...	95
C. M.		A	15th „ ...	Judicial statement No. 4	97-98
C. O.	...	1	28th February	Holidays, how far available for Criminal Courts	60
G. L.		2	25th March ..	Statement of miscellaneous cases ...	76
G. L.	...	2	25th „ ...	Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court ...	75,76,77
	...	2	25th „ ...	Instructions on Statements D and E, quarterly	81
C. O.	.	2	5th May	Death warrant how to provide for date of execution	22
G. L.	...	3	22nd „	Instructions for filling up column 7, Part II of quarterly statement D	82
	...	4	13th March ...	Processes in other jurisdictions to be easily legible	58

CIRCULARS ON CRIMINAL PROCEDURE ARRANGED ACCORDING TO THE ORDER OF SECTIONS OF THE CRIMINAL PROCEDURE CODE.

European British subjects under commitment to High Court.—Secs. 71–88, *Crim. Proc. Code.* (*C. O.*, 1864, *No.* 5, *May* 6*th.*)

It has been represented to the Court that Magistrates and Justices of the Peace, after making commitments to the High Court in its Original Criminal Jurisdiction, do not promptly send the records of cases to the Clerk of the Crown, but frequently delay doing so until the commencement of the Sessions at which the cases are to be tried. Such a practice causes great inconvenience to all concerned, and deprives the Judge generally of the opportunity which he ought to have for looking over the depositions of the witnesses before the case goes to trial. This Court is not aware of any reason for this delay in sending the record to the Clerk of the Crown, and, after this circular, will not fail to notice with its displeasure any such delay on the part of any Magistrate or Justice of the Peace. The Court takes this opportunity of reminding Magistrates and Justices of the Peace that a copy of the warrant of commitment should always form part of the record which is sent to the Clerk of the Crown.

2. The Court also requests the particular attention of Magistrates and Justices of the Peace to rule 3 of the rules circulated for their guidance by circular No. 85 of the Secretary to the Government of Bengal, dated the 27th July 1860, which requires that all witnesses should be bound, in the usual form, to attend at the court-house on a day specified, which should be the *first day of the Sessions* for which the prisoner is committed, and which should be the next following Sessions after the commitment, if there is a sufficient interval of time between the commitment and the next Sessions; and if not, then to the next following Sessions.

3. In order to ensure uniformity, the depositions of witnesses should be invariably recorded on foolscap paper and in a legible handwriting, the lines not being too closely written.

4. The following heading should commence each deposition :—

The deposition of , taken under the solemn affirmation prescribed by Act X of 1873 and High Court C O 12 of 1873 before me , Justice of the Peace, this day of

5. To save unnecessary labour, the Court think that it would be well if officers requiring such forms applied in the proper quarter for a supply of printed headings of this description.

6. The depositions should invariably be recorded and subscribed as required by the Code of Criminal Procedure.

7. As a rule, cases in which *primâ facie* it may appear that a person is charged with an offence for which he can be tried only by the High Court in its Original Jurisdiction, should be inquired into by magisterial officers who are competent to commit the accused; but if it happens, as sometimes it may, that a charge is entertained in the first instance by an officer who finds that he has no jurisdiction to proceed, and is therefore compelled to stay further proceedings and refer the case to a competent officer, in such cases the evidence should be taken fresh by such competent officer; and as the proceedings held by the first officer do not constitute the legal basis of any subsequent commitment, they should not form part of the record submitted to the High Court, and should not be transmitted as part of the record to the Clerk of the Crown.

8. The Clerk of the Crown states that not unfrequently Justices apply to him for advice and direction on various points, as, for example, respecting the course of the investigation, the sufficiency of the evidence, the number of the witnesses to be sent down, the selecting of some, and other similar matters of detail. The Clerk of the Crown represents that generally he refers such applications to the Solicitor to Government for reply, that officer being able to obtain the opinion of the law officers of the Government. The Court is of opinion that it would be better in such cases, where Justices require advice or direction (except as to what merely concerns the office of Clerk of the Crown), that Magistrates should apply direct to the Solicitor to Government. The Clerk of the Crown has suggested that at the examination of the prisoner the officer in whose charge the prisoner, if committed, will be sent down should

be present, in order that he may be able to prove the examination and signature of the prisoner to it, as in some cases this proof is required to establish the fact of British origin, on which the jurisdiction to commit and try depends. Much inconvenience is often occasioned to witnesses from the mofussil, through their want of information as to the means of getting quarters, if they are poor and strangers, and as to the means of obtaining their expenses. They should be informed that the Commissioner of Police of Calcutta has charge of these matters, and not the Clerk of the Crown.

C. O. No. 8, *6th August* 1866.

To all Justices of the Peace in the Lower and Extra Regulation Provinces of Bengal.

The Court request the particular attention of Magistrates and others who are Justices of the Peace to the accompanying copy of an order passed regarding the commitment of European British subjects for trial before the said Court.

2. All warrants for the commitment of such European British subjects should be directed to the Superintendent of the Presidency Jail in Calcutta, and should be in the Form C, Schedule II, Code of Criminal Procedure * * * *

3. The Court observe that in several cases in which European British subjects have been lately committed for trial to the High Court there has been great want of care on the part of the committing officers. In one case the witnesses were sent down before the prisoner, who did not arrive until after the conclusion of the Sessions, and after the witnesses had returned. On the prisoner's being brought up for trial there were no witnesses against him, and he was discharged. In other cases, prisoners have been sent down without any witnesses. In others, prisoners have been sent without any warrant of commitment, and the warrant of commitment has been sent afterwards, instead of being delivered to the police-officer in charge of the prisoner. The warrant of commitment ought always to be delivered to the officer in whose custody the prisoner is sent, in order that he may deliver it with the prisoner to the Superintendent of the Jail as his authority to receive and detain the prisoner. Failure of justice has been caused in many cases through such neglect, and the Court trust that Justices of the Peace will be more careful in these respects in future, and that

they will take proper steps for ensuring the attendance of the necessary witnesses at the Sessions. In addition to the warrant of commitment, a warrant should be directed to the police-officer in charge of the prisoner, and should direct him to take the prisoner and deliver him to the Superintendent of the Presidency Jail. A form of such warrant is given below:—

Form of Warrant.

To (the name of the officer or officers sent in charge of the prisoner) and to all other Her Majesty's Peace Officers in the provinces and districts of Bengal, Behar, and Orissa, and places subordinate thereto whom this may concern.

Whereas of is charged with (*state the offence as in warrant of commitment*) and has been committed by me, the undersigned Justice of the Peace for Bengal, Behar, and Orissa,* and the places subordinate thereto, to the Superintendent of the Presidency Jail for trial before the High Court of Judicature at Fort William in Bengal, you are therefore hereby required to receive the said into your custody and to deliver him into the custody of the Superintendent of the Presidency Jail at Calcutta, to be there safely kept until he shall be thence delivered by due course of law.

* This should be according to the appointment to the office of Justice of the Peace.

Dated the day of

* * * * *

In continuation of Circular Order No. 8, dated the 6th August last, requesting the attention of Justices of the Peace to the copy of an order which accompanied it, requiring that European British subjects who during the months of July, August, September, October, and November 1866 should be committed or bailed for trial before the High Court, should be tried at the usual place of sitting of that Court in Calcutta; and if not bailed, should be committed for intermediate custody to the Presidency Jail; and if bailed, should be bailed for trial at such usual place of sitting as aforesaid, the High Court are pleased to extend the operation of the said order until further notice.—(*C. O.*, 1866, *No.* 13, *December* 5*th.*)

Police Inquiry. Limits of authority of police in certain cases.—Sec. 117, *Crim. Proc. Code.*

The Court finds it necessary to call the attention of Magistrates to the provisions of sections 137, Act VIII of 1869—117, Act X of 1872, which forbid a police-officer in charge of a station from proceeding with the investigation of any case in which he may consider that there is no sufficient ground for entering on an inquiry, or *that the immediate apprehension of the accused is not necessary for the ends of justice.*

2. If he should be of this opinion he is not to proceed with the case, but must report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

3. Where a police-officer in charge of a station is thus precluded from entering upon an inquiry, no other police-officer is competent to make such inquiry, unless he is authorized and required to do so by an order of the Magistrate.

4. The Court desires that the police may be restrained from entering on inquiries in cases where their voluntary action is prohibited by law, and also cautions Magistrates against the indiscriminate use of police agency, which is too frequent in some districts, for the purpose of ascertaining matters upon which the Magistrate is bound to form his own opinion upon evidence given in his presence. This caution is especially needful in respect of cases triable under the 16th chapter of the Code.—(*C. O.*, 1871, *No.* 7, *July* 20*th.*)

Discretion of Court as to Mookhtars appearing in defence.—Sec. 186, *Crim. Proc. Code.*

(*C. O.*, 1870, *No.* 13, *August* 29*th.*)

The High Court are of opinion that injustice and hardship may often ensue from the indiscriminate exercise by Magistrates of the power conferred upon them of refusing to permit mookhtars to act and plead for accused persons in the criminal courts.

2. The Court think fit therefore to point out to all Magistrates and all other criminal courts that the terms of the above law do not warrant any *general rule* for the exclusion of mookhtars in all cases, but only allow the exercise by Magistrates of a discretion in each case as it arises. And the Court expect that Magistrates will not, by indiscriminate exclusion of persons who are invested by law with a

distinct professional status in criminal trials, deprive parties of legal aid, which they could frequently obtain at a moderate cost.

Examination of accused prior to commitment.—Sec. 193, *Crim. Proc. Code.*

It has been brought to the notice of the Court, though the fact is not within the Court's cognizance, that Magistrates, proceeding under chapter XV of the Code of Criminal Procedure, before committing an accused person to the Court of Session, do not, as a general rule, record his examination under section 193 of that Code.

2. Although the Code of Criminal Procedure does not make it *imperative* on a Magistrate to examine an accused person, at any stage of the inquiry, before committing him to stand his trial at the Court of Session, the Court think it necessary to impress upon all Magistrates the expediency of the general adoption of this course at some stage or other of the inquiry.

3. In those few and exceptional cases in which the guilt of an accused is so clear as to be beyond reasonable doubt, the practice in force may be permitted without risk; but inasmuch as by section 195 it is discretionary with a Magistrate to commit or to discharge an accused person according as he finds that the evidence is in his opinion sufficient for his conviction by the Court of Session or otherwise, it is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give when, after hearing all the evidence against him, or at any other time in the discretion of the Magistrate, he may be subjected to an examination before the Magistrate on points requiring elucidation; it being clearly explained to the accused that it is at his option to answer such questions or not.

4. The Court have every expectation that the procedure adverted to in the foregoing paragraph will be henceforth, if it be not already, adopted by all Magistrates, as that most likely to conduce to a perfect administration of justice.

5. The Court, however, desire to explain that in issuing these directions they in no way sanction any proceedings of an inquisitorial nature.—(*C. O.*, 1864, *No.* 13, *July* 28*th.*)

Commitment. What papers to be included in record of commitment.—Sec. 198.

(*C. O.*, 1872, *No.* 1, *January* 23*rd.*)

It having come to the knowledge of the Court that some degree of misapprehension obtains as to what papers should be forwarded (under section 198 of the Criminal Procedure Code) from the Magistrate when a commitment is made to the Court of Session, the following instructions are issued to all criminal authorities.

2. In such cases the record of the Magistrate is to be taken to include—

First.—The proceeding by which the case is originated in the Magistrate's Court.

Secondly.—All papers showing the steps taken under the authority of the Magistrate upon the complaint; the summons, if any, and its return; the warrant and the return, or other documents showing how and when it has been executed; also any search warrant, and the report showing how it has been executed.

Thirdly.—The report, if any, on such inquiry as that under sections 133 and 146.

Fourthly.—The orders, if any, sanctioning the prosecution, when such sanction is necessary.

Fifthly.—The order, if any, withdrawing or transferring the case from one Court to another.

3. The papers on the record of the Magistrate are not evidence in the Court of the Sessions Judge either for or against the accused, except so far as they can be used in corroboration or in the cross-examination of a witness, and are formally put in and accepted by the Court as evidence.

[*Note*—This must be read subject to the provisions of section 33, Act I of 1872, passed 15th March 1872.]

Commitment to Sessions.—Sec. 198, *Crim. Proc. Code.*

When several persons are accused of the same offence, and the case is one for the Sessions, all should be committed.

Circular Order No. 100, *dated* 27*th May* 1862.—Forwards for the information and guidance of the criminal

authorities copy of a letter to the Officiating Additional Sessions Judge of Hooghly, dated the 19th May 1862:—

"I am directed to acknowledge the receipt of your letter No. 158, dated the 6th instant, and to state that when several persons are accused of the commission of the same offence, it would be obviously inconvenient if a Magistrate were to punish some and commit others to the Sessions; and as the Code does not seem to contemplate such procedure, the Magistrate should, if he considers the case to be one for the Sessions, commit all those concerned for trial before that tribunal."

Sessions Trials.—Secs. 231–265, *Crim. Proc. Code.*

Commitments made whilst Sessions are pending.

Circular Order No. 9, *dated* 30*th November* 1796.—A question having been submitted to the Nizamut Adawlut, whether a prisoner committed by the Zillah Magistrates, after the arrival of the Court of Circuit at his station, is to be tried at the session of the Court of Circuit then pending, or at the ensuing session, the Court acquaint such courts, for their guidance in cases of this nature, that they are of opinion, provided the witnesses are in attendance and the trial is in every respect ready to be brought before the Court of Circuit, it should be immediately proceeded upon, in humanity to the prisoner, who must otherwise be kept in confinement till the ensuing jail delivery.

Circular Order No. 49, *dated* 13*th April* 1808.—The Court of Nizamut Adawlut desires that the several Judges of Circuit for the division, on completing the Sessions of jail delivery, will in future admit and try commitments which may be made during their residence at each zillah; and that they will uniformly observe this practice, except in cases where any material delay would occur in procuring the attendance of witnesses, or in other preparations for the trial.

COMMITMENTS.

Sessions Court's Remarks on Commitment.

A diversity of practice appearing to prevail among Sessions Judges with regard to the communication of any

remarks which they may make on commitments made to them to the officers concerned, the Court desire to inform all Sessions Judges and Judicial Commissioners that as a general rule the communication of such remarks is neither necessary nor even very desirable, and should be made in cases the peculiar circumstances of which appear to render necessary the adoption of such a course, but need not invariably take place.—(*C. O.*, 1870, *No.* 14, *December* 3*rd.*)

Spelling Prisoners' Names.

The Sudder Court have had occasion to remark that sufficient attention is not paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. This is a point of great importance, and should meet with particular attention. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person charged, whenever the name of any one of them is mentioned. Very serious inconvenience has resulted from the neglect of this precaution.—(*Extract from C. O.*, 1833, *No.* 135, *February* 22*nd.*)

Jurors and Assessors.—Secs. 240, 243, *&c., Crim. Proc. Code.*

As the provisions of the law regarding the record by the Sessions Judge of the opinion of the assessors in cases tried by him, and in districts in which the system of trial by jury obtains, of the verdicts of juries, seem to be imperfectly carried into execution, the Court are pleased to draw the attention of all Sessions Judges to the proper procedure to be observed in these respects.

2. "*The opinion of each assessor shall,*" it is declared by section 262, Code of Criminal Procedure, "*be given orally, and shall be recorded in writing by the Court.*" The Court desire that this record shall appear at the commencement of the judgment of the Sessions Judge. It is not, in the Court's opinion, sufficient that this record should contain a mere verdict of guilty or not guilty, or proven or not proven. What the Court require is, not only the result arrived at by each assessor sitting on a sessions trial, but, if possible, the reasons by which each assessor arrived at

that result; that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions.

3. The Sessions Judges of districts in which trials by jury are held, and all Sessions Judges presiding over trials in which, under section 234, Code of Criminal Procedure, special juries shall be empanelled, should, before commencing the proceedings of the trial, record in English the names of all the jurymen in attendance at the sessions, and after the selection by lot, under section 240, of the persons who are to constitute the jury in the particular case before the Court, they shall also mark the names of those selected. These papers should form part of the record of the case.

4. If, in accordance with section 243, any objection be raised to any juror, the name of the objector, the nature of the objection, and the decision of the court, shall also be recorded.

5. The verdict of the jury shall also be stated on the paper on which the foregoing details are set forth.

6. The Court expect that these instructions will for the future be implicitly observed.—(*C. O.*, 1865, *No.* 4, *June* 23*rd.*)

Charge to Jury.—Secs. 255, 464, *Crim. Proc. Code.*

From Registrar to Additional Sessions Judge of

Dated Calcutta, the 4*th March* 1875.

I am directed to acknowledge the receipt of your letter No. 24, dated 19th February 1875, in which you inquire whether the direction to the jury should be reduced to writing before delivery, or written out afterwards from memory.

2. I am to inform you in reply that it is not necessary that it should be reduced to writing before delivery; but it is essential that the "statement" (sec. 255, Act X of 1872) or "heads of charge" (sec. 464) placed upon the record should represent with absolute accuracy the substance of the charge, and be such as to enable this Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.

Forwarded to all Sessions Judges for information and guidance.—(*C. M.*, 1875, *No.* 2, *March* 5*th.*)

APPEALS.

Secs. 266–286, *Crim. Proc. Code.*

Appeals to be accompanied by Copy of Judgment, and not of Sentence merely

Secs. 275–464.

With reference to the alteration in section 276 of the Code of Criminal Procedure by Act XI of 1874 (the Criminal Procedure Amendment Act), the Court are pleased to issue the following circular order.

2. The High Court find it necessary to call the attention of the several subordinate criminal courts, and of the officers in charge of jails, to the provisions of Act X of 1872, in respect of the submission of criminal appeals. Section 275 of the present law enacts that "every petition of appeal shall be accompanied by a copy of the *judgment* or order appealed against."

3. What the judgment or final order in the case shall contain is enacted in section 464 of the Code:—"The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding." The fourth paragraph of the same section points out that "in trials by jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the jury." In cases tried by jury, therefore, the heads of the Judge's charge to the jury will take the place of the reasons for the finding.

4. No doubt can exist as to the plain requirements of the law in this matter, and the Court desire that the subordinate courts will carefully comply with the provisions of the new Code and discontinue the practice which at present exists in several quarters of furnishing to the person affected, and sending up to the appellate court, a copy of the sentence only with the petition of appeal.—(*C. O.*, 1874, *No.* 2, *June* 8*th.*)

Appeals to Sessions Court from Prisoners in Jail.

The Court directs that communications from the Officer in charge of the jail to the Sessions Judge relative to the appeals of prisoners to him be made to the Judge direct, and not through the Magistrate of the district, who has no concern with the decisions of the Court of Session made on appeal, unless when the appeal happens to be from his own decision.

2. The appellate court shall in every case, except as otherwise herein provided, certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of the Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the appellate court, or to inform the appellant *in writing*, through the officer in charge of the jail, of the result of his appeal. [Compare also next circular.]

3. In cases where an order passed by an officer in charge of a sub-division, other than the sudder sub-division, is reversed or modified on appeal, the appellate court shall certify its decision to the Magistrate of the district, who will issue a warrant to the officer in charge of the jail to give effect to the orders of the appellate court, and will inform the court from whose orders the appeal was preferred of its result.—(*C. O.*, 1869, *No.* 6, *July 2nd.*)

Result of Appeals to Sessions Court. Intimation to Prisoners in Jail.—Sec. 276, *Crim. Proc. Code.*

The High Court has been pleased, on the proposal of the Judge of Jessore, to sanction, and now circulates for general adoption, the form appended hereto as a convenient mode of conveying information to prisoners in jail as to the result of their appeals. A copy will be sent to the Superintendent of Stationery with a view to a sufficient supply being provided.

List of Criminal Appeals heard by the Sessions Judge of
on 18

Name of Prisoner	Against whose order the appeal is preferred.	Order passed in appeal.	REMARKS.

MEMO.

Forwarded to the Officer in charge of the Jail for communication to the Appellants.

COURT OF SESSIONS,
The 18 . } *Sessions Judge.*

—(*C. O.*, 1872, *No.* 2, *March* 18*th.*)

Appeals to High Court from Prisoners in Jail.

In consequence of different modes of procedure being followed in different districts, the Court are pleased to lay it down as a general rule that petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, be forwarded by such officers direct to the Registrar of the High Court of Judicature, intimation of the fact being at once given in each instance, and in the annexed form, to the Judge whose sentence or order is appealed against.

2. Petitions of appeal must be presented within the period allowed for appeal, and must be accompanied by a copy of the judgment or order appealed against.

3. Petitions not presented in time, or not accompanied as above, are not to be transmitted to the Registrar, but to be returned to the petitioner, with an endorsement by the officer in charge of the jail showing the date of presentation.

To THE SESSIONS JUDGE OF

The undersigned begs to report, for the information of the Sessions Judge, that an appeal by the prisoner
against the Judge's sentence or order, dated
and noted at foot, has this day been presented to the officer in charge of jail, and has been forwarded to the High Court, as required by section 418 of the Code of Criminal Procedure.

—(*C. O.*, 1867, *No.* 9, *August 7th.*) *Officer in charge of the Jail.*

Appeals to High Court.

Circular No. 5, *dated the* 28*th May* 1868.

In modification of circular order* No. 94, dated the 6th May 1862, the Court direct that as a general rule, in cases

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* *Circular No.* 6 (*old No.* 94), *dated the* 6*th May* 1862.

In modification of the orders contained in this Court's circular No. 26 (*below*), dated the 20th June 1849, I am directed to inform you that the Court have determined that on any appeal being presented to you for submission to the Sudder Court, if the case so appealed has been tried with the aid of assessors, all the proceedings connected therewith are to be forwarded as heretofore for the consideration of the Court, in case it may be necessary on a perusal of the petition of appeal to refer to the record. Should you, however, have tried the case with a *jury* it will be necessary only to forward to the Court the petition of appeal.

2. Your special attention is requested to section 416, [275], which enacts that "every petition of appeal shall be accompanied by a copy of the sentence or order appealed against."

No. 26, *dated the* 20*th June* 1849.

The Court request that, in transmitting to them (in accordance with the circular order No 137, 19th May 1848,) petitions of appeal from the orders of the Sessions Courts in criminal trials, you will at the same time transmit the records of commitment and trial in original, without taking copies of them

2 In the margins of letters transmitting the proceedings, in addition to the dates of the sentences appealed from and of presentation of the petitions, are to be entered the names of all the prisoners in the case, from the sentence in which one or more prisoners may have appealed, distinguishing the prisoners who have appealed from the others.

of appeal to the High Court from the sentence or order of a Sessions Judge, the record shall be forwarded to the High Court by the Sessions Judge immediately on receipt of the notice of appeal directed to be forwarded to him by circular order No. 9, dated 7th August 1867.

Instances having repeatedly occurred of Sessions Judges applying the "general rule" laid down in circular order No. 5, dated 28th May 1868, to cases in which sentences or orders have already been passed by an appellate court upon appeal, the Court directs that records be not sent up in cases in which no second appeal lies, unless the cases be called for by the High Court.

2. In such cases parties should be left to apply to the High Court by motion.—(*C. O.*, 1869, *No.* 7, *August* 12*th.*)

In what cases Appeals not to be forwarded to High Court by Jail Superintendents.

Officers in charge of jails are hereby informed that petitions of appeal from prisoners should not be forwarded to the High Court in cases in which sentences or orders have already been passed by an appellate court on appeal (as, for example, by a Court of Session on an appeal from a conviction before the Magistrate of the district, or other officer exercising the powers of a Magistrate), such sentences or orders being final under section 285 of the Code of Criminal Procedure, except as provided in sections 272 and 297, under the latter of which the High Court may *call for* and examine the record of any case tried by any Court of Session.

2. In such cases parties should be left to apply to the High Court by motion made by a pleader in open court.—(*C. O.*, 1869, *No.* 8, *August* 25*th.*)

Supplementary Evidence before Appellate Court.—Sec. 282, *Crim. Proc. Code.*

The Court request that in any explanation that may be furnished by the courts of criminal appeal regarding any appeals which have remained undecided for more than one month in consequence of further inquiry and additional evidence being called for under section 282, Code of Criminal Procedure, there shall be stated the date on which such

order was passed, so that the Court may thus be in a better position to judge of the real cause of the delay in the decision of such case.

2. The High Court take this opportunity of reminding the lower courts of criminal appeal that any proceedings involving further inquiry or the taking of additional evidence under the law above cited should be promptly completed, in order that the course of justice may not be interrupted more than is absolutely unavoidable.—(*C. O.*, 1865, *No.* 11, *November* 20*th.*)

References in Revisional Jurisdiction.—Secs. 292–300, *Crim. Proc. Code.*

It having been brought to the notice of the Court that the practice varies as regards the transmission to the High Court of applications made to the Magistrate under sections 295-296 of the Code of Criminal Procedure, some Magistrates sending up such cases direct to the Court, and others through the Sessions Judge, it appears desirable that the practice should be made uniform. And as the law does not seem to authorize any control or expression of opinion on the part of the Sessions Judge, the Court does not see that any good purpose is served by transmitting the papers through him.

2. Such cases accordingly should not be sent up through the Sessions Judge, and should not appear in his statements 1 and 2.—(*C. O.*, 1869, *No.* 4, *May* 21*st.*)

The High Court have felt much inconvenience from the imperfect manner in which cases have been referred to them under sections 295-296, Criminal Procedure Code, which empowers Sessions Judges and Magistrates to call for and examine the records of courts immediately subordinate to them, in order to satisfy themselves as to the proceedings of such courts being regular, but without the power to alter any sentence or order of such court, save on appeal.

2. They are accordingly pleased to direct that such references shall always be accompanied by the records of the case to which they relate, and by an English letter commencing—"Under section 296, Act X of 1872, and circular order of the High Court, dated 15th July 1863, No. 18, I herewith transmit the record of the case noted in the

margin, to be laid before the High Court, with the "following report." There will then be stated—

1*st.*—A brief analysis of the case.

2*nd.*—The order of the lower court.

3*rd.*—In what particular portion of that order the court making the reference considers an error on a point of law to exist.

4*th.*—The grounds upon which the order of the lower court should be reversed.

Unless there be any particular reason why delay should be avoided, the explanation of the lower court should be called for and accompany the reference.

3. The Court do not think it necessary to enter into any details of the particular occasions on which such references should be made to them, or to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may give rise to a reference to them. It is deemed sufficient to enjoin the exercise of a sound discretion in making these references to the Court, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference.—(*C. O.*, 1863, *No.* 18, *July* 15*th.*)

Execution of Sentence.—Secs. 321-322, *Crim. Proc. Code.*

The High Court is pleased to circulate for general adoption the forms of warrant appended hereto, namely—

(1) A form of warrant for the execution of capital sentences.

(2) A form of warrant for sentences of transportation.

(3) A general form of warrant for other sentences (Form D of the Code of Criminal Procedure).

(4) A form of warrant for the levy of fine.

2. The first two forms are applicable to Courts of Session only, but the third form is general, and applies to Magistrates as well as to Sessions Judges.

3. The fourth form relates to fines. This warrant is intended for the use of Courts of Session and Magistrates when it is necessary to enforce a sentence of fine.—(*C. O.*, 1873, *No.* 5, *March* 11*th.*)

Warrants of Imprisonment. Language.

In continuation of circular order No. 5, dated 11th March last, the Court is pleased, with the concurrence of His Honor the Lieutenant-Governor, to direct that warrants of imprisonment directed to Superintendents of District Jails shall be in the English language, and that warrants directed to the keepers of sub-divisional lock-ups shall issue in the vernacular, except where the sentence is for imprisonment of a longer term than 15 days, in which case the warrants issued by sub-divisional authorities shall, if possible, be in English.—(*C. O.*, 1873, *No.* 10, *August 27th.*)

WARRANT OF COMMITMENT (SECTION 303, C. C. P.)

Jailor of

To

Whereas

son of of village

pergunnah in the district of

was convicted before me

Name and official designation (specifying powers in case of Magistrate).

of the offence of

Mention the offence, quoting also Act and section.

and was sentenced to

State the punishment fully and distinctly, mentioning its nature and extent.

you are hereby required to receive the said

into your custody in the said jail of

together with this warrant, and there carry the aforesaid sentence into execution according to law.

Dated the *day of*

WARRANT OF COMMITMENT FOR TRANSPORTATION.

To

Jailor of

Whereas

son of of village

pergunnah in the district of

was convicted before me

Name and official designation

of the offence of

Mention the offence, quoting also Act and section.

State the punishment fully and distinctly, mentioning its nature and extent.

and was sentenced to
you are hereby required to receive the said
into your custody in the said Jail of
in order to the aforesaid sentence being carried into execution according to law.

Dated the *day of*

Sessions Judge.

Death Warrant.

To

Jailor of

Whereas on the day of the month of
in the year 18
son of of village pergunnah
in the district of

Name and official designation.

was convicted before me

Mention the offence, quoting also Act and section.

of the offence of
and sentenced to suffer death by being hanged by the neck until he is dead, and whereas the said sentence has been duly confirmed by order of the High Court of Judicature,

It is hereby ordered that execution of the said sentence be made and done upon the said
on the of the month of
or so soon thereafter as may be: You are hereby required to receive the said
into your custody in the said jail of
together with this warrant, and there carry the aforesaid sentence into execution according to law.

Dated the *day of*

Sessions Judge.

Warrant For Levy of Fine.

To the Magistrate of the district of
and all other Magistrates and Police Officers within the Sessions Division of

Whereas
son of of village
pergunnah in the district of

Name and official designation.

was convicted before me

of the offence of
and sentenced to pay a fine of
you are hereby required and directed to levy the amount of the said fine by distress and sale of any moveable property belonging to the said

Mention the offence, quoting also Act and section.

Dated the *day of*

Sessions Judge.

Separate Warrant for each several Prisoner.

The Court having reason to believe, from a representation made by the Superintendent of the Alipore Jail, that the circular order of the late Nizamut Adawlut, No. 8* of the 15th August 1859, is not always strictly acted up to, I am directed to request that you will in future be careful that its provisions are never disregarded.—(*C. O.*, 1864, *No.* 12, *July 27th.*)

With reference to the concluding portion of paragraph 2 of circular order No. 3, dated 25th March 1867, on the subject of warrants to officers in charge of jails for the execution of sentences (cited on the margin for facility of reference), the Court is of opinion, without entering into the question of what the law requires, that, as a matter of practice and convenience, a separate warrant should be issued in the case of each prisoner.

"But the law in force now does not require that the Sessions Judge should issue a separate warrant of this nature in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence."

This course should accordingly be observed in future.—(*C. O.*, 1870, *No.* 6, *February 22nd.*)

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* *Circular No.* 8, *dated the* 15*th August* 1859.

The Court, in compliance with a request made by the Inspector-General of Jails, Lower Provinces, and in order to remedy some inconveniences experienced from the practice of including several prisoners in one and the same warrant for execution of sentence, which the provisions of the circular orders marginally noted do not sufficiently meet, are pleased to order as follows:—

292, May 14th, 1824.
429 } June 18th, 1824.
295 }

(1) In every instance where more than one prisoner is sentenced by one and the same order of the Nizamut Adawlut or Sessions Judge to transportation, or to banishment, there shall be a separate warrant delivered on account of each prisoner to the Jail Daroga of the district jail, to be forwarded to the Magistrate of the district to which a prisoner may be ordered by Government to be sent, or to the Superintendent of the Alipore Jail, as the case may be.

(2) A copy of his warrant shall be delivered to each prisoner.

(3) In the transit of a prisoner from the custody of one Magistrate to that of another, the original warrant and the said copy of the warrant shall be carefully transmitted along with the prisoner.

(4) On the expiration of sentence, or death before expiry of sentence, of a prisoner, the said warrants, original and copy, shall be taken and returned to the Magistrate of the district whence the order for execution of sentence issued.

[The Circular of 1867 above referred to, No 3 of 25th March 1867, is reproduced here for convenient reference]

As some misapprehension seems to have existed [1867] in regard to the warrants prescribed by sections 383, 384, and 386 of the [then] Code of Criminal Procedure, the Court is pleased to issue the following explanations and instructions, with a view to the proper observance of the provisions of the Code in the preparation and issue of such warrants.

2. Sections 383 and 384 provide, in cases in which the sentence of the Sessions Court is confirmed by the High Court, as well as where it does not need to be referred for such confirmation, for the issue *by the Court of Session* of warrants to Magistrates, or other officers in charge of jails, to cause the sentence passed to be carried into execution. Under circular order No. 10, dated 20th November 1865, which was based upon the expressed intention of Government to appoint officers, other than Magistrates, to the special charge of large jails, *such* warrants should be addressed to the officer in charge of the jail, instead of the Magistrate of the district. But the law in force now does not require that the Sessions Judge should issue a separate warrant of this nature in the case of each prisoner sentenced: a single warrant should include all who are involved in one sentence.

3. By section 386, the *Magistrate or other officer in charge of the Jail* is required, in executing the warrant of the Sessions Judge referred to in the foregoing paragraph, in every case of imprisonment under the sentence of the High Court or of the Court of Session, to issue his warrant to the jailor, stating the offence of which the accused person has been convicted, the period during which he is to be imprisoned, and the nature of the imprisonment. As regards warrants of this nature, a separate warrant should be issued to the jailor for each prisoner, and it should accompany the prisoner to whatever jail he may be transferred It is to such warrants also, and not the warrants issued by the Sessions Court, that the provisions of circular order No. 8, dated 15th August 1859, must be considered to apply under the present procedure.

Residence of Prisoners to be noted in Warrants of Imprisonment.

Difficulty and doubt having arisen in the preparation of the "*Roll of Released Prisoners*" (kept by the Police Department) in consequence of the non-insertion in warrants of imprisonment of the place of residence of persons convicted and sentenced, the High Court are pleased to direct that in future judicial officers shall enter in the warrants issued to officers in charge of jails the *residence* of the persons whom they convict and sentence.—(*C. O.*, 1868, *No.* 7, *September* 10*th.*)

Register of Warrants.

It having come to the High Court's knowledge that the register of warrants* prescribed by the Sudder Nizamut Court's circular order No. 167 of the 15th May 1835 has in many districts fallen into disuse, the High Court desire me to call your attention to the above order, and to request that you will in future carefully keep up the prescribed register, column 6 being omitted, as it is no longer required. Instances have lately occurred of prisoners being illegally detained in jail after their term of sentence had expired, which would not have happened if the registers of warrants had been properly kept up.—(*C. O.*, 1866, *No.* 11, *October* 1*st.*)

The Court directs the discontinuance in the office of the Magistrate of the district of the general register of warrants prescribed by the late Sudder Court's circular of the 15th May 1835, No. 167, and the High Court's circular, dated 1st October 1866, No. 11.

2. Each criminal court is enjoined to keep up its own register, and see that its own warrants are duly returned. The form in which the register shall be maintained is that laid down in circular order No. 167, dated 15th May 1835.—(*C. O.*, 1871, *No.* 1, *January* 11*th.*)

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* *Register of Warrants.*

1	2	3		4	5			6
Name of person sentenced	Date of sentence.	Term of imprisonment where the sentence is imprisonment.		When the sentence will have expired.	Warrants when received back from Jailor or Magistrate.			REMARKS.
		Years	Month	Date and year	Month	Date	Year	

Warrants of Imprisonment for more than two years to be on superior paper.

All Sessions Judges in the Regulation and Non-regulation Provinces are hereby informed that in the opinion of the Court all warrants for sentences exceeding two years should be on paper of a superior quality to that on which warrant forms are now printed. Sessions Judges should therefore indent for forms of such warrants in due proportions, and see that the forms are used in the manner above indicated.—(*C. O.*, 1873, *No.* 1, *January* 3*rd.*)

Release Warrant unnecessary.

The warrant for release of an accused person who has been acquitted, prescribed by the late Sudder Court's circular No. 2, dated the 10th January 1862, is hereby superseded, and criminal courts are informed that they ought in such cases simply to direct that the prisoner be set at liberty.—(*C. O.*, 1873, *No.* 2, *January* 18*th.*)

Warrants of Imprisonment in case of Military Convicts.

The High Court is pleased, at the request of His Honor the Lieutenant-Governor, under instructions from the Government of India, to direct that in all cases where the accused is a soldier or person holding any rank in the army, the warrant for detention or imprisonment shall set forth accurately the rank of the prisoner and the regiment or military department to which he belongs.—(*C. O.*, 1873, *No.* 12, *November* 28*th.*)

Death Warrant how to provide for Date of Execution.

Section 301 of the Criminal Procedure Code directs the Court of Session, on receipt of the order of the High Court confirming a sentence of death, to issue a warrant to the officer in charge of the jail in which the prisoner is confined to cause the sentence to be carried into execution. As it is expedient to provide that a sufficient, but not excessive, interval should elapse between the passing and the execution of such sentences, the High Court directs that the date named by the Sessions Court in its warrant for the execution of a sentence of death shall be not less than fourteen, nor more than twenty-one, days from the date of the issue of such warrant.—(*C. O.*, 1876, *No.* 2, *May* 5*th.*)

Returns to Warrants of Capital Sentence.—Sec. 305, *Crim. Proc. Code.*

The Court do not consider that it is any longer necessary that warrants for the execution of capital sentence should be submitted to them, as the Court think that the court referred to in the latter portion of section 305 of the Code of Criminal Procedure is the Court of Session and not the High Court.

2. Any instance in which a Magistrate may have executed such a sentence in an improper or careless manner should of course be reported to the High Court.—(*C. O.*, 1863, *No.* 13, *June* 13*th.*)

The attention of the Court has been drawn by Government to a letter from the Inspector-General of Jails, Lower Provinces, stating that he has frequently, during the last seven years, become acquainted with instances of irregularities respecting the filing and disposal of warrants, and submitting a letter from the Sessions Judge of Behar, pointing out an instance of delay which has taken place on the part of the Officiating Joint-Magistrate of the district in returning to him the warrants of four prisoners who died in 1858 and 1859.

2. I am desired under these circumstances to call your particular attention to circular order No. 34,* dated the 19th June 1804, which directs how warrants are to be returned after execution of sentence.—(*C. O.*, 1863, *No.* 13, *June* 8*th.*)

Levy of Fines.—Sec. 307, *Crim. Proc. Code.*

With a view to introduce uniformity of practice, and to define the limits within which the agency of the police may

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* No. 34, DATED THE 19TH JUNE 1804.

To the Courts of Circuit.

I am directed to inform you that it is the intention of the Nizamut Adawlut that all warrants should be returned to the court by which they are issued after the complete execution of the sentence contained in them, with an endorsement certifying the manner in which the sentence has been carried into execution.

In the case of a sentence both for corporal punishment and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the Magistrate should retain the warrant until the expiration of the term of imprisonment, or return it duly endorsed, should the prisoner die during the course of the term; or, in the event of his being removed to another zillah, the warrant should be transmitted to the Magistrate of the zillah to whom the prisoner may be sent, with information that he is to return it duly endorsed to the court of circuit on the expiration of the sentence or death of the prisoner.

The Court accordingly desire that you will communicate the above remarks to the several Magistrates within your division for their information and guidance.

be exercised in the levy of fines under section 307, Criminal Procedure Code, the Court request attention to the following instructions.

2. Criminal courts are empowered by section 307 of the Code of Criminal Procedure, in certain cases, to issue a warrant *for the levy of the amount by distress and sale* of any moveable property belonging to the offender. This warrant should be directed to a police-officer; and the authority issuing it, following the analogy of English law in such cases, should set a time for the sale and for the return of the warrant. If no one claims the property distrained, the police have the power of selling it, within the time that should be specified in the warrant, without any previous reference to the Magistrate; if a claimant come forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the police. If at any time subsequent to the return to the warrant, and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (section 70 of Penal Code), and the Magistrate has, from information gained in any way, reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of his property within a specified period, returnable within a certain time.—(*C. O.*, 1864, *No.* 8, *June* 22*nd.*)

Currency of Sentence on Escaped Prisoners.—Sec. 316, *Crim. Proc. Code.*

At the instance of the Government of Bengal, the High Court directs that all Sessions Judges and Magistrates, when passing sentences, after their re-arrest, on prisoners who have escaped, will carefully comply with the provisions of section 316 of the Code of Criminal Procedure, and specify in the warrant the date from which the sentence is to take effect, whether at once, or after a lapse of a period equivalent to the portion of the prisoner's original sentence which remained unexpired at the time of his escape; the date on which the original sentence, of which the currency was interrupted by the escape, will expire being clearly shown.—(*C. O.*, 1873, *No.* 9, *July* 15*th.*)

REFORMATORIES.—SEC. 318, CRIM. PROC. CODE.

In absence of reformatories, sentences under section 318 *not to be awarded.*

In accordance with a representation from the Inspector-General of Jails, the Court are pleased to bring to the notice of Sessions Judges and Magistrates that no reformatory, or part of a prison declared to be a reformatory under the Act, exists in Bengal at present. Sentences of confinement in a reformatory, under section 318, Act X of 1872, cannot therefore be carried into effect, and it is better to abstain from passing such sentences.—(*C. M.*, 1874, *No.* 2, *May* 20*th.*)

Sentences of Transportation.—Sec. 319, *Crim. Proc. Code.*

With reference to the form in which many Sessions Judges pass sentence of transportation in cases in which imprisonment is awardable for seven years or upwards, the Court request the attention of Sessions Courts to the terms of section 59 of Act XLV of 1860, from which it will be seen that the correct mode of proceeding is to sentence the offender to transportation, mentioning at the same time that, under section 59 of the Indian Penal Code, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—(*C. O.*, 1866, *No.* 9, *August* 3*rd.*)

The Government of India having, in their resolution in the Home Department, No. 2028-40, dated 28th December 1868, determined on restricting transportation to Port Blair to the cases of life-convicts, the High Court desire to call the attention of all criminal authorities, who are empowered to pass sentences of transportation, to the fact that such sentences, when passed for periods less than life, cannot, in consequence of this restriction, be carried into effect as sentences of transportation beyond sea, but will operate substantially as sentences of imprisonment. The Local Government will doubtless shortly issue instructions as to the places where, and the circumstances under which, such sentences are to be carried out, and it only remains for the Court therefore, without in any way desiring to fetter the discretion vested in them by law, to urge upon the authorities above mentioned the necessity for exercising a sound discrimination in passing sentences of transportation, and of keeping in view that a sentence of imprisonment involves greater suffering, and consequently must be looked upon as more severe than a sentence

of transportation for an equal period.—(*C. O.*, 1870, *No.* 1, *January* 17*th.*)

The following resolution of the Government of India in the Home Department, No. 440, dated the 16th November 1874, is forwarded herewith to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 1, *February* 5*th.*)

Extract from the Proceedings of the Government of India in the Home Department (Port Blair),—No. 440-*S, under date, Fort William, the* 16*th November* 1874.

READ—

Circular of the Home Department, Nos. 2911-18, dated 6th May 1863, drawing attention to the ample accommodation available for convicts at Port Blair, and suggesting the desirability of freer use being made by the Sessions Court of the power vested in them under section 59 of the Indian Penal Code, by which sentences of transportation for not less than seven years may be substituted for sentences of imprisonment.

Circular of the Home Department, Nos. 2085-86, dated the 18th August 1864, directing that transportation may be carried into effect only in cases of convicts sentenced to fourteen years and upwards.

Resolution of the Home Department, No. 2028, dated 28th December 1868 and orders cited therein, restricting transportation to life sentences.

Resolution of the Home Department, dated 19th May 1874, regarding the deputation of the Hon'ble Sir H. Norman, K.C.B., to inspect the Penal Settlement at the Andamans.

Report by the Hon'ble Sir H. Norman, K.C.B., dated the 13th June 1874.

RESOLUTION.—The Governor-General in Council has had under consideration the question of rescinding the resolution of 1868, by which only life-convicts were to be transported to the Andamans. This resolution has been maintained from that date, and the proportion of term to life-convicts has in consequence been very largely reduced The Superintendent of the Settlement now very strongly urges the necessity of a proportion of term-convicts being kept up, on the ground that such convicts form an important element of safety to the settlement. In this recommendation Sir H. Norman concurs. Upon this view thus supported, His Excellency in Council has decided to waive the considerations of general policy which restricted *transportation* to life-convicts and to permit term-convicts to be sent to the settlement. The maximum proportion which term-convicts should bear to life-convicts will be precisely fixed hereafter, the admitted objects being to provide petty officers and to keep a certain number of term-men among the working gangs With these objects, General Stewart has been desired to report what number of term-convicts he needs at once, and to detail the instalments by which they should subsequently arrive. He has also been requested to mention any particular class or caste of convicts whose transportation may be desirable or useful to the settlement, as also those, if any, who should not be sent.

2. The Superintendent has replied to this reference, and has urged that steps be at once taken to send term-convicts to Port Blair as soon as the transport season opens, because a larger amount of skilled labour than the settlement can now supply is urgently required by him.

He states that there is immediate work for the classes specified in the margin, and if a large proportion of them can be obtained from the Madras jails it will be a gain, as convicts from that presidency stand the climate of the Andamans better, and are more tractable than natives of other provinces.

Classes.	No.
Carpenters	120
Bricklayers	120
Stone-masons	20
Sawyers ...	50
Stone-cutters	15
Brass-makers	5
Iron-moulders and casters	5
Blacksmiths ...	50
Shoeing-smiths	3
Brick-moulders ...	5
Surveyors	4
Draftsmen	3
Rattan-workers ...	6
Engine drivers	3
English and Vernacular writers	15
Tile-makers	3
Potters	3
Total ..	430

3. As it is not, however, expedient, in the interests of discipline, to permit educated men to work as clerks until they have by good conduct in imprisonment become entitled to such light employment, General Stewart recommends that convicts who have been for some years at hard labour in India should alone be selected for employment as clerks at Port Blair. This recommendation is approved by the Government of India.

4. He also requires a considerable number of sweepers for conservancy purposes, and in view to secure an ample supply of this class he suggests that the rules regarding age and physique need not be strictly enforced, provided that those selected for transportation are fit for sweeper's work. For the rest he considers that if it be possible to supply the requirements of the settlement without having recourse to dacoits and habitual thieves, it would be desirable, as convicts of these classes rarely settle down to work or give up the practices of their early training in crime. Moreover, dacoits are the most persistent concocters of schemes for escape, and thus help to unsettle the minds of their comrades. With these exceptions, the Superintendent does not think it would be expedient to place any restriction on the transportation of term-prisoners who fulfil the usual conditions required of transmarine convicts. These recommendations are also approved.

5. It has been already observed that the deportation of term-convicts is now sanctioned in deference to authoritative opinions affirming the necessity for it. In sanctioning this important change of system, His Excellency in Council observes that the substantial reasons which have hitherto caused a different policy to be affirmed must be well known. They concern mainly the difficulty of adjusting the penal system to the two different classes of convicts for a term and convicts for life, so that it shall neither be too indulgent for the former class nor too rigorously severe for the latter. There are also other difficulties touching the status and general treatment of the convict population which are greatly enhanced by mixing together those who are to return to civil society and those who are not to return. General Stewart believes, however, that all these difficulties can be surmounted; and His Excellency in Council agrees to the experiment on the understanding that one essential condition of success is that a sentence of

transportation for a term must be carried out with a due rigour There has hitherto been a general impression that the deterrent effects of transportation have been considerably diminished by reports of time-expired convicts on their return to the main land; and if this impression be well founded, it indicates the necessity of guarding against a serious drawback to the advantages of the mixed system which has now been again admitted.

6. Local Governments and Administrations are therefore requested to inform the judicial authorities of the purport of this resolution, and to report how many convicts of the required description can be contributed from each province. The men selected should have a minimum term of seven years to serve. As one month of the transportation season has already elapsed, this information should be supplied as early as possible.

7. In future, whenever practicable, term-convicts of not less than ten years' sentence should be sent to Port Blair in the proportion of one to every three life-convicts.

In continuation of circular order No. 1, dated the 5th February 1875, the following resolution of the Government of India in the Home Department, No. G—321, dated 14th July 1875, is forwarded to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 4, *August* 17*th.*)

Extract from the Proceedings of the Government of India in the Home Department (Port Blair),—No. G—321, *under date, Simla, the* 14*th July* 1875.

Read again—

Home Department Resolution No. 2028, dated 28th December 1868, restricting transportation to the Andamans to life sentences.

Home Department Resolution No. 8-440-51, dated 17th November 1874, re-opening the Andamans to term-convicts.

RESOLUTION.—The resolution of the 17th November, above cited, explained the reasons which induced the Government of India to reverse the orders of 1868 regarding the transportation of term-convicts, and contained general instructions as to the manner in which the change of system should be introduced. It also declared that if it were possible to supply the requirements of the settlement without having recourse to dacoits and habitual thieves, it would be better to avoid sending men of these classes. It further provided that no convicts who had less than seven years to serve, or whose original sentence was for less than ten years, should be sent to the Andamans, and that, whenever practicable, the proportion in each dispatch should be one term-convict to every three life-convicts. The exact proportion which term-convicts should bear at the settlement to life-convicts was, however, left to be afterwards decided. On this point General Stewart's views were that the number of term-convicts should be sufficient to make their weight felt, to effect which there should be, he thought, at least one-third term-convicts to two-thirds life-convicts.

2. The Government of India were at the same time informed that the settlement was able to provide immediately for 1,200 term-convicts; and as term transportation had ceased for some years, it was anticipated that there would be no difficulty in complying with General Stewart's requisition. It was supposed that there would be a sufficient accumulation of term-prisoners in the jails of the several provinces to admit of a sufficient number of term-convicts being selected whose acquirements rendered them specially eligible for transfer, and that it would be unnecessary to recruit from others belonging to the more troublesome classes. These expectations, however, have not been realized. It has been found that comparatively only a few term-convicts were eligible for transportation, as Courts of Session have abstained, as a rule, from passing other sentences of transportation than for life. In fact only 195 altogether appear to have been transported since the 17th November last.

3. It is clear, therefore, that the required proportion of term to life-convicts at the settlement is far from being attained at present. Prior to the recent change of system the proportion of such convicts was about one-tenth of the whole; for there were 7,669 convicts of all classes in the settlement, of whom 733 were term-men, from which number the releases of the year have to be deducted. It is evident, therefore, that to attain the required proportion a large number is still required, and that the requirements of the settlement cannot be supplied if the restrictions mentioned in paragraph 1 are maintained. Moreover, General Stewart has since urged the transportation of dacoits and habitual criminals, rather than check the supply of the necessary number of term-men.

4. It has also been represented to the Government of India that any restrictions attached to sentences of transportation introduce an element of uncertainty into judicial sentences. A Judge may desire to award a sentence of term transportation as the punishment best suited to the offence committed; but as long as the carrying out of such a sentence is contingent, not upon judicial considerations, but upon the demand at Port Blair for term-convicts, he will not know whether effect will be given to the sentence actually passed, or whether some other punishment will be substituted for it. He may therefore hesitate to pass an order which may be disregarded.

5. Upon consideration of all these circumstances, the Government of India have resolved that for the next few seasons, and until the desired proportion of term to life-convicts has been attained, as many as possible of the former who have not less than seven years to serve shall be transported to Port Blair, subject only to the restrictions as to physical capacity, prescribed in Home Department orders Nos. 22-1329-1378, dated 18th March 1868, and Nos. 669-675, dated 9th April 1873. Prisoners of the sweeper class are, however, exempted from the provisions regarding fitness for hard labour, and it will be sufficient if they are capable of performing the ordinary duties of their caste; and in order that Courts of Session may no longer be deterred from passing term sentences of transportation by the consideration that such sentences may not be enforced, local Governments are requested to take the necessary measures for acquainting judicial officers with the purport of

this resolution, and to invite their attention to section 59 of the Penal Code.

6. It should be understood that these orders are applicable to male convicts only; female convicts should not for the present be sent to the Andamans, except under sentence of transportation for life.

In continuation of circular order No. 4, dated the 17th August 1875, the correspondence received under an endorsement from the Government of India in the Home Department, No. 13-477, dated the 28th October 1875, is forwarded to all judicial authorities subordinate to the High Court for information and guidance.—(*C. O.*, 1875, *No.* 5, *November* 24*th*)

No. 13-477, dated Simla, the 28th October 1875.

Endorsed by the Government of India, Home Department.

Copy of correspondence forwarded to local Governments and Administrations, and to the Foreign Department, for information, in continuation of paragraph 6 of resolution No. 9-321-332, dated 14th July last.

No. 4711, dated Simla, the 28th October 1875.

From—The Offg. Secy. to the Govt. of India, Home Department,

To—The Officiating Superintendent of Port Blair.

In reply to your letter No. 700, dated the 16th ultimo, I am directed to express concurrence in your views regarding the objections to the transportation of female term-convicts to the Andamans.

No. 700, dated Port Blair, the 16th September 1875.

From—The Offg. Supdt. of Port Blair and Nicobars,

To—The Offg. Secretary to the Govt. of India, Home Dept.

I have the honor to acknowledge the receipt of your letter No 333 of the 14th July, enclosing a resolution of the Government of India of the same date, on the subject of the transportation of term-convicts during the ensuing season, and drawing my attention to the last paragraph of the resolution regarding the transportation of female term-convicts, and inviting a full expression of opinion thereon.

2. In reply, I beg to state that the reasons which were given in favour of the transportation of male term-convicts can in no way apply to females, and I am of opinion that term transportation in their case is by no means desirable. The demand for intramural work in the settlement is small, and the employment of females on suitable extramural labour is not possible. The accommodation for females is also limited, and male term-convicts are not permitted to marry.

3. Under these circumstances I consider that the transportation of female term-convicts to Port Blair should be prohibited.

Oaths and Affirmations.—Sec. 331, *Crim. Proc. Code, and Sec.* 7, *Act X of* 1873.

The following forms of oaths and affirmations are prescribed by the High Court of Judicature at Fort William in Bengal, under section 7, Act X of 1873.

2. The same forms will be used in criminal as in civil cases.

3. Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

4. In other cases the oaths are to be administered upon such symbol, or accompanied by such act, as may be usual, or as such witness, interpreter, or juror, may acknowledge to be binding on his conscience.—

FOR WITNESSES.

Oath.

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

Affirmation.

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

FOR INTERPRETERS.

Oath.

I swear that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the court may require me to interpret, translate, and explain. So help me God.

Affirmation.

I solemnly declare that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the court may require me to interpret, translate, or explain.

FOR JURORS.

Oath.

I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence. So help me God.

Affirmation.

I solemnly declare that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.—(*C. O.*, 1873, *No.* 12, *June 7th, Civil.*)

Evidence to be recorded legibly and clearly; otherwise copies to accompany record in appeals to High Court.

The High Court are pleased to adopt the following circular order issued by the Sudder Court at Agra on the 26th ultimo:—

"Difficulty having been frequently experienced in deciphering the memoranda of the substance of the evidence of witnesses recorded under the provisions of the Criminal Procedure Code, the attention of all criminal officers is called to the necessity of carefully writing these memoranda in a legible manner.

"2. In the case of trials forwarded to the High Court, in which, from any cause, the memoranda in question have been indistinctly or illegibly recorded, *copies* of such memoranda should be submitted with the record of the case."—(*C. O.*, 1862, *No.* 2, *August* 13*th.*)

Particulars for identifying persons examined as witnesses.

The High Court are pleased to direct that all magisterial officers subordinate to them shall, in the examination of prosecutors, witnesses, and prisoners, continue to record in each deposition, statement, or defence the following particulars, which are indispensably necessary for the future identification of the parties examined, viz. the name of the person examined, the name of his or her father; and if a married woman, the name of her husband; the religion, caste, profession, and age of the party or witness; and the village and pergunnah in which he or she resides.—(*C. O.*, 1864, *No.* 19, *September* 17*th.*)

Recording Evidence.

(*C. O.*, 1872, *No.* 4, *August* 10*th.*)

Considerable inconvenience having been felt by the Judges composing criminal benches of this court from the manner in which the record of criminal appeals and references is frequently made up in the Courts of Sessions Judges

and Magistrates, the following directions are for the future to be strictly attended to.

2. The evidence of the witnesses should in all cases be recorded on printed or lithographed forms, and care should be taken that the headings are carefully and accurately filled up. No more than one deposition should be written on each sheet; and when the evidence of a witness does not fill the whole of the paper, care should be taken to affix the signature of the Judge or Magistrate required by section 334 of the Code of Criminal Procedure exactly at the close of the writing.

3. The attestation required could be impressed at the end of a deposition by a stamp, which would be, for obvious reasons, a better plan than affixing it as a label by means of gum or paste.

4. The Court also desire that all documents referred to by the Sessions Judge, and used by him as evidence (such as medical depositions, confessions of accused, &c., &c.), should be put up with the Sessions nuthee. Considerable inconvenience, as well as delay, is caused by the appellate court having frequently to search through the Magistrate's proceedings for papers which ought to form part of the Sessions record. Copies can, if necessary, be placed in the Magistrate's record.

5. When confessions of accused persons made before a Magistrate form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out. The Court has frequently to notice the great difficulty experienced in the reading of the vernacular papers of the local courts by persons unaccustomed to the peculiarities of the writing and local idiom.

Examination of Witnesses.

As regards the examination of complainants, witnesses, or persons accused of the commission of any offence, under inquiry or trial before a criminal court, the following rules should be strictly observed in every case by Sessions Judges and Magistrates of every grade.

RULES.

Every witness shall be examined *vivâ voce* in open court in the presence of the Judge [or Magistrate.]

A Judge [or Magistrate] shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

If, after the examination of a witness has commenced, the Judge [or Magistrate] be compelled to attend to any other business, the examination of the witness shall be suspended as long as such other business is being attended to.

The examination of a witness shall not be interrupted for the purpose of enabling the Judge [or Magistrate] to attend to other business, unless such business be of an urgent nature.

An adjournment of the hearing of the case shall not be ordered except for the absence of a witness or any other reasonable cause. In such a case a written order signed by the Magistrate shall be recorded, stating the reason for this adjournment, and the date to which the hearing is adjourned.

When it is deemed necessary to adjourn the hearing of a case, the adjournment shall be for as short a time as possible, and no person accused of any offence shall be remanded for any period exceeding fifteen days (sec. 194).

Every Sessions Judge and Magistrate shall sit daily and punctually at the hour appointed for the opening of his court, unless prevented by circumstances, which are to be recorded in the proceedings of the court.—(*Extract from C. O.*, 1864, *No.* 6, *May* 16*th.*)

Prompt Examination of Witnesses after their Appearance.

The Court having recently [1865] found from an explanation furnished by a Magistrate that witnesses are not invariably examined and discharged on their attendance before criminal courts, but are sometimes temporarily discharged without any examination, being bound over to appear again on another day, think it their duty to notify to all Magistrates their severe condemnation of such irregular proceedings.

2. The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If from unavoidable causes an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner.

3. The practice which the High Court have found to exist in the court of one Magistrate is not, it is believed, prevalent; but if, contrary to the Court's expectations, it should exist anywhere, it must be forthwith discontinued, inasmuch as it is not only contrary to the spirit of the Criminal Procedure Code, but is calculated only to deceive the superior authorities by placing before them fictitious returns of the punctual and regular examination and discharge of witnesses.

4. The Court expect that the Chief Magistrates of districts will carefully supervise the returns of their subordinates, as the Court hold them responsible for the correction of such irregularities as have now been discovered.—(*C. O.*, 1865, *No.* 12, *November 27th.*)

Daily Register of Attendance of Witnesses.

(*C. O.*, 1845, *No.* 194, *January 22nd, L. and W. P.*)

The Sudder Court have reason to apprehend that witnesses in general are required to be in attendance for a much longer period than is either desirable or requisite. Their detention arises sometimes from the postponement of their examination for some days after their arrival in the Magistrate's court, and sometimes from the omission of the Magistrate to peruse the depositions as soon as they are recorded by the mohurirs, or from his neglecting, in heavy and complicated cases, to examine the witnesses on points which may appear to have been insufficiently elucidated. But to whatever cause attributable, it is obvious that prolonged detention of witnesses must, in the case of indigent individuals especially, prove highly distressing, and tend in general to create a reluctance on the part of private parties to attend the criminal courts and aid by their testimony the efforts of magisterial authority for the detection of crime and of those engaged in its commission.

The adoption of a methodical plan will, the Court believe, have a beneficial effect, by directing the attention of the magisterial officers in a special manner to this part of their duties, and thus preventing the prolonged detention of witnesses, except for good and sufficient reasons. With this object the Court circulate a form of diary, which has been in actual use in the North-Western Provinces, and which the Magistrates are hereby desired to introduce in their own offices and in those of their subordinates.

The several headings of the diary are so clear that the brief directions annexed to the form will suffice to show the manner in which it should be prepared.

Diary of Witnesses in attendance in the Magistrate's Court.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
					Case in which concerned.		Number of days detained.								
Date of arrival.	Date of deposition, &c.	Date of attendance.	Name.	Designation.	Plaintiff.	Defendant.	1 day.	2 days.	3 days.	4 days.	5 days.	6 days.	7 days.	More than 7 days.	Name of mohurir taking evidence.

This book is always on the Magistrate's table in the cutcherry. The Nazir fills up the 1st, 4th, 5th, 6th, and 7th columns whenever a petition may be presented or a case be received from the thana; he then fills up the 16th column and delivers the case to a mohurir, and if he do not receive it back ready on the same day, reports accordingly to the Magistrate. On receiving it he fills up the 2nd column, and the Magistrate signs all the depositions, and when that officer *hears and attests* the depositions, he signs them again and causes the 3rd and corresponding columns to be immediately filled up in his own presence.

Mode of Calculating Detention of Witnesses.

(*C. O.*, 1860, *No.* 72, *February* 8*th.*)

In order to secure uniformity in the preparation of the diary of attendance of witnesses prescribed [by the above] circular order No. 194 of the 22nd January 1845, informs

criminal authorities that in calculating the number of days a witness has been detained, the day of his arrival is invariably to be included, provided he make his appearance sufficiently early to allow his evidence being recorded on that day.

Recording Evidence in Warrant Cases.—Sec. 335, *Crim. Proc. Code.*

No. 773, dated Calcutta, the 20th June 1874.

From—The Registrar, High Court, Calcutta,

To—The Officiating Sessions Judge of

I am directed to acknowledge the receipt of your letter No. 61S, dated 5th June 1874, forwarding a copy of correspondence between yourself and the Magistrate as to the language in which the evidence of witnesses should be recorded in warrant cases.

2. In reply I am to say that your view of the case is correct. The Government notification dated 30th June 1864, and published at page 1462 of the *Calcutta Gazette* of the 27th July 1864, notified under section 196 of the old Code of Criminal Procedure (Act XXV of 1861) "that in every district of the Lower Provinces the evidence of witnesses shall be taken down by the Magistrate with his own hand and in his own vernacular language, unless he be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open court.' It was also notified "that if the vernacular language of any Magistrate be neither English nor the language of the district in which his court is held, he may take down the evidence in English, or in the language of the district, instead of in his own vernacular."

3. Section 335 of the new Code of Criminal Procedure (Act X of 1872) reproduces section 196 of the old Code, and under the concluding paragraph of section 2 of the new Code the Government notification of the 30th June 1864 is as much in force as if it had been published and made under section 335 of that Code.

Copy of this letter forwarded to all Sessions Judges and Magistrates for information.—(*C. M.*, 1874, *No.* 4, *June* 20*th.*)

CONFESSIONS, RECORDING OF.

Section 346, *Criminal Procedure Code.*

The correspondence reproduced below is forwarded for the information and guidance of Sessions Judges and Magistrates—(*C. M.*, 1873, *No.* 7, *July* 30*th*):—

Extract, paragraphs 1, 2, *and* 3, *from a letter from the Officiating Additional Sessions Judge of*————, *No.* 162, *dated* 10*th July* 1873.

1. In all criminal cases which come before me from Native Deputy Magistrates, I find that while all the witnesses' depositions are written by the Deputy Magistrates with their own hands, directly the confession of a prisoner has to be recorded the Magistrate allows a mohurrir to write it, and contents himself with making English notes of the substance of the confession, though it is needless to remark that the importance of having an accurate record of the statement made is far the greater with respect to confessions.

2. I wrote six months ago to the Magistrate of ————on the subject a letter, a copy of which I enclose; but I do not find that any attention is paid to it, and the matter has just been prominently brought to my notice at the recent Sessions at————, when a Deputy Magistrate admitted before me, when I examined him about a confession recorded in his presence, that he allowed the police-officer who had brought in the man to be present while the confession was recorded by a mohurrir, and to suggest questions to be put to the confessing prisoner.

3. I asked the Deputy Magistrate why he had not written the confession himself. He said that the law did not make it compulsory on him to do so.

From Registrar of the High Court of Judicature at Fort William in Bengal, to the Officiating Additional Sessions Judge of————, *No.* 1047, *dated Calcutta, the* 30*th July* 1873.

I am directed to acknowledge the receipt of your letter No. 162, dated 10th instant, in which you suggest the issue of instructions with a view to secure the recording of confessions by Magistrates with their own hands.

2. I am to observe in reply that the Courts are unable to take away by order a discretion which the law (sec. 346, Criminal Procedure Code,) allows a Magistrate, for this matter does not come within section 335. But they agree with you that it is not proper to allow the police-officer who brought the prisoner to be present while the confession is being recorded by a mohurrir, and to suggest questions to be put to the confessing prisoner. The Court would not be much inclined to attach weight to a confession obtained under such circumstances, though the confession might be admissible; but the course taken suggests that the Deputy Magistrate was not really conducting the inquiry himself.

SUMMONSES ON MEDICAL SUBORDINATES OF DISTRICT TO BE SERVED THROUGH DISTRICT MAGISTRATE AND INTIMATED TO CIVIL SURGEON.

Section 351, *Criminal Procedure Code.*

Considerable inconvenience having been experienced in consequence of sub-assistant surgeons or native doctors at sub-divisions being summoned from their stations without the knowledge of the Civil Surgeon of the district to whom they are subordinate, for the purpose of giving evidence in cases in which they have held *post-mortem* examinations, or when their attendance may be otherwise required by the judicial authorities, the High Court are pleased to direct that in future all summonses on these medical subordinates be served through the Magistrate or other executive head of the district to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during their absence.—(*C. O.*, 1868, *No.* 1, *January* 10*th.*)

SUMMONSES ON POLICE-OFFICERS TO BE SERVED THROUGH DISTRICT SUPERINTENDENT OR ASSISTANT SUPERINTENDENT.

Section 351, *Criminal Procedure Code.*

As there is reason to believe that public inconvenience has frequently been caused by the practice, said to prevail [1866] in several districts, of summoning police-officers as witnesses without reference to their immediate superiors, the Court are pleased to direct that whenever a summons to appear as a witness in a criminal case is issued to an officer of police, it be served upon such officer through the

Superintendent of the district or the assistant in charge of the sub-division to which he may belong.—(*C. O.*, 1866, *No.* 14, *December 6th.*)

Witnesses arrested under a Warrant to be treated as Persons under Civil Process.

Sections 352, 355, *Criminal Procedure Code.*

A case having been recently [1864] brought to the notice of the Officiating Chief Justice, in which a person who should have been simply summoned as a witness, had, without any sufficient cause, been arrested under a warrant issued by a Justice of the Peace under the provision of section 188 [now 352], Code of Criminal Procedure, and who, after his arrest, had been put in irons, it appears to His Lordship desirable to call your attention to the necessity of stating, as shortly as possible, in every warrant, the special matter on which it proceeds.

[After stating the law and citing the sections of the old Code of Criminal Procedure.]

Witnesses brought up under the 188th [now 352] and 191st [now 355] sections should not be treated as criminals and put in irons, but simply as persons arrested on civil process.—(*C. O.*, 1864, *No.* 21, *November 22nd.*)

Recognizances.

Sections 391, 396, 397, *Criminal Procedure Code.*

It has been recently brought to the Court's notice that considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of recognizances from accused persons and their sureties, and that the result of the diversity and irregularity is not only to cause police-officers to be employed in needless inquiries, but also to keep the accused person in custody, pending the result of the inquiry into the sufficiency or otherwise of the bail offered: the attention of the criminal authorities is therefore directed to section 391 of the Code of Criminal Procedure, which simply requires the Magistrate to take a recognizance, *in such a sum of money* as he may think sufficient, from the accused and one or more sureties; and to sections 396 and 397, which lay down the proceedings to be adopted to compel payment of the penalty mentioned in the recognizance from the person executing the personal recognizances, and from his sureties. At the same time, however, it is the duty

of the Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond.—(*C. O.*, 1864, *No.* 15, *August* 11*th.*)

FINDING IN CASE OF ACQUITTAL ON GROUND OF BEING LUNATIC.

Section 429, *Criminal Procedure Code.*

In continuation of their circular No. 14, dated 5th August [reproduced below], the Court request the particular attention of all Sessions Judges to the terms of section 429, Code of Criminal Procedure, in all cases falling under it.

2. It will be observed that it is necessary that the finding should state specially whether the accused committed the act charged or not; if he be acquitted on the ground that, at the time at which he is charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law. In some instances the Judges have found the prisoner *guilty* of the offence charged, and then acquitted him on the ground of insanity, thus including two opposite verdicts in one and the same finding,—a contradiction caused entirely by a want of attention to the words of the law.—(*C. O.*, 1864, *No.* 22, *December* 10*th.*)

The circular above referred to is reproduced here for convenient reference; the references are to the old Code of Procedure.

Circular No. 14, dated Calcutta, the 5th August 1864.

From—The Offg. Registrar of the High Court of Judicature at Fort William in Bengal,

To—All Criminal Authorities in the Regulation and Non-Regulation Districts.

A case having been recently brought to the notice of the High Court, in which the course to be pursued in case of an accused person being a lunatic was entirely misapprehended by the district criminal authorities, the Court are pleased to draw the attention of the criminal authorities subordinate to them to the provisions of sections 388 to 394 of the Code of Criminal Procedure. The rules embodied in those sections are as follow:—

1. If a person charged with an offence appear to be of unsound mind and incapable of making a defence when brought before a Magistrate, that officer, after ascertaining the *primâ facie* truth of the charge, and making the inquiries prescribed in section 388 of the Criminal Procedure Code regarding the state of mind of the accused, if he consider the person to be of unsound mind, is to stay all further proceedings.

2. If the offence with which the party is charged, and of the truth of which there is *primâ facie* proof, be bailable, the Magistrate may release the party on sufficient security being given that he shall be properly taken care of, prevented doing injury to himself or others, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused must be kept in safe custody in such place as the Local Government shall direct.—(Sec. 390, C. C. P.)

3. The Magistrate may at any time, if he has reason for believing that the person is of sound mind, resume the investigation; but if the accused person, when again brought before the Magistrate, shall still appear to be of unsound mind and incapable of making a defence, the Magistrate shall act as provided by sections 388 and 390; the course taken under section 390 following, as a necessary consequence, the inquiry held under section 388 (392).

4. If the party accused, when brought before the Magistrate, is in a fit state to make his defence, the Magistrate should proceed with the investigation; and if the offence be one *triable* by a Magistrate, he should complete the trial, and if he determines that the offence charged was committed by the accused in a sound state of mind, he should pass sentence on him according to law: but if the accused should be acquitted on the grounds that at the time he committed the act, which but for the incapacity found would have been an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the Magistrate should retain him in safe custody till the orders of the Local Government be received for his removal to, and detention in, a lunatic asylum or other suitable place.

5. If the offence with which the accused party is charged *be not triable* by the Magistrate, he must, if the party be in a fit state of mind to make a defence, complete his investigation; and if he find the charge proven against the prisoner, should commit him for trial, in order that if it be shown on the trial that the offence was committed when the prisoner, by reason of unsoundness of mind, was incapable of knowing that he was doing what was wrong, or prohibited by law, he may be acquitted by the Court, which alone has authority to try him. The Sessions Court will proceed to deal with the prisoner in exactly the same mode as the Magistrate has been directed to deal with him in the 4th paragraph of this communication, according as he may find that the offence of which the prisoner was charged was committed by him in a sound or an unsound state of mind.

6. If in the course of the trial the prisoner appear to be of unsound mind, the Sessions Judge must suspend proceedings and follow the course prescribed by section 389.

7. If the party being of sound mind when put on his trial is found, although of sound mind at the time, not to be guilty of the offence wherewith he stands charged, and is acquitted on that ground, he must be discharged as any other person legally acquitted.

8. Under no circumstances should a party accused of an offence, being at the time of unsound mind and incapable of making a defence, be examined by a Magistrate or committed for trial.

A case having occurred in which a prisoner committed suicide after being transferred from the lunatic asylum to the custody of the Magistrate for the purpose of standing his trial, the Court direct that you will be so good as to make arrangements for the early trial in future of prisoners who, after being confined in such an asylum, are reported of sound mind and capable of making their defence.—(*C. O.*, 1864, *No.* 9, *June* 30*th.*)

Charge of Perjury.

Section 440, *Criminal Procedure Code.*

The Court are pleased to direct that in commitments for giving false evidence, under sections 193, 194, and 195 of the Indian Penal Code, the committing officer shall invariably insert in the charge the particular statements on which perjury is assigned. By this method of procedure alone can the accused fully understand the offence with which he stands charged, and be enabled to meet the charge brought against him.—(*C. O.*, 1866, *No.* 3, *February* 9*th.*)

Recording Sentences.

Sections 461–464, *Criminal Procedure Code.*

The High Court are pleased to circulate for adoption the following rules which lay down the method in which sentences should be recorded:—

* * * * *

3*rd.*—If a portion of the facts in evidence constitute *one* offence, and another and *distinct* portion constitute a *second separate and distinct offence*, under the Penal Code, a verdict on each charge should be entered up, and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence: the second sentence to commence on the expiry of the first. The Code of Criminal Procedure does not recognize concurrent or cumulative sentences.

4*th.*—Such, for instance, would be the course to be pursued when there is a conviction for rape and assault, or subsequent imprisonment, or for forgery of a bill of exchange, and for subsequent perjury in swearing in a court of justice that it is a genuine document.—(*C. O.*, 1864, *No.* 16, *August* 20*th.*)

REGISTER OF CONVICTIONS OF HEINOUS OFFENCES.

Sections 461–464, *Criminal Procedure Code; Section* 75, *Penal Code; and Section* 4, *Whipping Act* (*second convictions*).

1. Offences relating to coin and Government stamps (Chapter XII, P. C.).
2. Offences against property (Chapter XVII, P. C.).
3. Giving or fabricating false evidence (secs. 193 to 195, P.C.).
4. Falsely charging any person with having committed an unnatural offence (secs. 211 and 377, P. C.).
5. Assaulting or using criminal force to any woman with intent to outrage her modesty (sec. 354, P. C.).
6. Rape (sec. 375, P. C.).
7. Unnatural offences (sec. 377, P. C.).
8. Forgery (secs 465, 466, 467, 468, 469, P. C.).
9. Culpable homicide (sec. 304).
10. Causing grievous hurt (secs. 323 and 326, and 329, 331, 333, 335, 338).

For the purpose of enabling Magistrates to ascertain whether parties charged before them with heinous offences have been previously convicted of any of the offences for which enhancement of punishment is provided on a second or subsequent conviction by section 75, Act XLV of 1860 [Penal Code], and section 4, Act VI of 1864 [Whipping Act], and for purposes of general statistical information, the High Court are pleased to direct that registers be opened in Magistrates' offices in the form appended to this circular. These registers should contain the names of parties convicted of any of the crimes specified in the margin, and should be in the language and character in use in the District Courts, varying according to the vernacular of the district.

2. Every conviction, as sentence is passed, must be entered in the office of the Magistrate of the district by the officer whose duty it is to keep the *Register of Convictions.* In cases committed to the Sessions, the entry will be made on sentence being passed by the Sessions Judge. If a prisoner be released on appeal, whether by the Judge or by the Magistrate, a note should be made in the column of remarks of the date and purport of the order of the Appellate Court.

3. Similar registers should be kept up in the same manner by sub-divisional officers regarding the offences specified which may have been committed within their respective jurisdictions, and for which any persons may have been convicted. These officers should report to the Magistrates the entries of the past month regularly at the commencement of each successive month for incorporation in the general district register.

4. To ensure the proper preparation and keeping up of the register, the Magistrate or other magisterial authority in charge shall require the officer whose duty it is to prepare it to bring the register for his inspection and signature at least once every week.

5. At the close of the year an alphabetical register of the parties convicted within the 12 months should be made for facility of reference; and at the close of every fifth year, an alphabetical register should be prepared from the alphabetical registers of the previous five years.

6. When a prisoner has been convicted more than once, a note to that effect should be made against his name in the register opened for that purpose.

7. For the purpose of giving the foregoing rules retrospective effect, an alphabetical register should be at once prepared in the form prescribed in this circular order, of parties convicted since the date on which the Penal Code came into force, *i.e.* from the 1st January 1862 to the end of 1864, the requisite information being derived from the Register of Convictions in the charge of the record-keeper and of the jailor.—(*C. O.*, 1865, *No.* 5, *5th July.*)

Name of the prisoner (including his *alias*, if any).	Name of his father.	Residence.	Profession or trade	Caste.	Age or supposed age	Height.	Personal marks, such as squint, lameness, loss of limb, permanent scars, &c	Of what offence convicted	Date of conviction	Sentence passed.	Previous conviction	Remarks.

At the instance of His Honor the Lieutenant-Governor, the Court is pleased to call the attention of District Magistrates to the instructions contained in circular order No. 5, dated the 5th July 1865, regarding the maintenance of a "Register of criminals convicted of heinous offences" with a view to a strict observance of those instructions in future, there being reason to believe that they have not been uniformly observed, and that injury to the public service has arisen from such omission.—(*C. M.*, 1875, *No.* 1, *March* 1*st.*)

Government letter No 470, dated the 2nd February 1875.

Conviction of any Military Employé to be intimated to Military Department.

In accordance with the wishes of His Excellency the Governor-General of India in Council, the High Court directs that Judicial Commissioners, District Judges, and Magistrates, will forward to the Military Department of the Government of India a copy of the conviction and sentence in all cases in which persons serving under the Government of India in that Department are convicted in a Criminal Court.—(*C. O.*, 1871, *No.* 6, *July* 17*th.*)

Prosecutions of Public Servants.

Section 466, *Criminal Procedure Code.*

The Court is pleased to issue the following instruction for the information and guidance of all criminal authorities subordinate to it. The charges which, under section 466 of the Code of Criminal Procedure, cannot be entertained against the officers therein described, except under the sanction or direction of the Local Government or other competent authority, relate to offences which can be committed by public servants *as such*, and which are specified in Chapter IX of the Indian Penal Code, and to no other. Offences committed against the person or property of individuals by one who happens to be a public servant are not necessarily committed by him *as such public servant*, in the sense in which those words are used in the Penal Code, and unless committed in that character, must be regarded as the acts of *individuals in their private capacity*. Charges, therefore, founded on such acts do not need the sanction of Government or other competent authority aforementioned before they can be entertained by a Criminal Court, but should be dealt with in the same way as charges against individuals ordinarily are.—(*C. O.*, 1864, *No.* 20, *October* 4*th.*)

Security for Good Behaviour.

Sections 507-512, *Criminal Procedure Code.*

No. 980, dated Calcutta, the 15th July 1873.

From—The Registrar of the High Court,

To—The Sessions Judge of

I am directed to acknowledge the receipt of your predecessor's letter No. 23, dated 14th ultimo, forwarding for approval a sample form of order to be issued by the Sessions Court for the custody of persons required to furnish security for good behaviour, whose cases are submitted to that Court under section 507, Criminal Procedure Code.

2. I am to observe in reply that, for the reasons stated below, the warrant of imprisonment in such cases should be that of the Magistrate, and not of the Court of Session.

3. It seems to the Court that under sections 507, 508, and 510, the Court of Session has (1) to consider whether

security ought to be required, and for what period, and therefore to confirm, modify, or annul the order of the Magistrate made under section 506; and next, whether, in the event of the person failing to give security, he should suffer simple or rigorous imprisonment. The Judge has then to signify his decision to the Magistrate, who, if the security is not furnished, should proceed to issue his own warrant, setting out the order of the Court of Session, as would be necessary to regulate action under sections 511 and 515.

4. The law directs (sec. 510) that imprisonment shall follow on failure to give the security, and this can be most conveniently ascertained by the Magistrate after the order of the Court of Session has been made. The order of the Court of Session is in fact not an original order of that Court, but a further order on that of the Magistrate, which the Magistrate has to carry out.—(*C. M.*, 1873, *No.* 6, *July* 15*th.*)

Possessory Award under Section 530, Criminal Procedure Code.

Circular No 10, *dated Calcutta*, 16*th April* 1863.

Forwards, for information and guidance, a copy of a letter, No. 420, from the Registrar of the High Court of Judicature at Fort William in Bengal, to the Magistrate of Sylhet, dated Calcutta, the 16th April 1863.

Having laid before the Court your letter No. 213, dated the 3rd instant, in which you request an expression of their opinion as to whether possession can be given under section 318 [now sec. 530] of the Code of Criminal Procedure to the claimant of a share in the jumma of an *ijmalee* property, I am directed to state that as the dispute is for the right to receive rent in a certain proportion, and not for possession of land or the produce thereof, section 318 [now sec. 530, Act X of 1872] of Act XXV of 1861 is no more applicable to the case you mention than Act IV of 1840 would have been were it still in force. The proper procedure is that pointed out by section 26 of Regulation V of 1812, as modified by Regulation V of 1827, and steps to enforce that procedure should be adopted.

2. I am to remind you that any reference you have to make to the Court should be addressed through the Judge of the district.

CIRCULARS ON THE PENAL CODE.

Prosecutions for False Charges.

Section 211, *Penal Code.*

The Court having reason to believe that there is [1863] some considerable misapprehension among officers by whom the criminal law is administered as to the liability of a party preferring a false charge of an offence within the terms of section 211 of the Penal Code when the charge is dismissed *before* the "accused person" is put on his defence, the following instructions are circulated for general information.

2. The person accused of making a false charge should not be put upon his defence *before a primâ facie* case is made out against him.

3. It is not necessary, however, that the person whom he accused should have been put upon his defence.

4. A person may, for instance, be accused of murder, or of any of the offences punishable under section 377 of the Penal Code: the case may entirely break down, and the Magistrate may refuse to issue a warrant, or he may dismiss the complaint. The complainant in such a case would, if the accused were to prosecute him for instituting a false charge, and to establish against him the "intent to cause injury, knowing that there was no just or lawful ground for such complaint," be liable to the penalty prescribed by section 211 of the Penal Code.

5. There is, however, a wide distinction between the procedure necessary when a person is charged with an offence and that laid down under section 209 of the Code of Criminal Procedure, which it would be well to note. Under the latter section the complainant might, by the order of dismissal, if his complaint were "frivolous and vexatious," be ordered to pay to the person against whom the charge was brought such amends, not exceeding 50 Rupees, as the Magistrate might consider just and reasonable; but it would be necessary, in order to make him liable to the penalty incurred under section 211 of the Penal Code for a false complaint, to hold a regular trial.

6. A Magistrate might indeed, in the case last adverted to, proceed of his own motion under the Code of Criminal Procedure without any complaint from the party aggrieved; but he would still be under the necessity of holding a trial, and, in the case of "a false charge of an offence punishable with death, transportation for life, or imprisonment for 7 years or upwards," of making a commitment to the Court of Session. He would not, of course, proceed under section 68 of the Code of Criminal Procedure and take action of his own motion, unless he were perfectly satisfied that an offence under section 211 of the Penal Code had been committed. In ordinary cases he would leave the person falsely accused to prefer a complaint; and such complaint could not be entertained without the sanction required by section 169 of the Code of Criminal Procedure. Such sanction, though it may be accorded "at any time," should not ordinarily be granted until the proceedings based on the false complaint have been concluded in favour of the "accused person."

7. Further, it should be borne in mind that a complainant is not liable to punishment under section 211 of the Penal Code in *all* cases in which the prosecution fails, or in which the "accused person" is acquitted. *That* section is applicable to those cases only in which the charge is "*falsely*" *made* "*with intent to cause injury, and with the knowledge that there is no just or lawful ground for such charge.*" Want of reasonable or probable cause may raise a presumption of such knowledge and intent; but a mere failure to obtain a conviction would not of itself be sufficient to warrant the presumption.—(*C. O.*, 1863, *No.* 19, *July* 21*st.*)

In Convictions of Culpable Homicide, exceptions under Section 300, Penal Code, to be specifically noted.

The Court are pleased to adopt the following circular issued on the 20th December last by the Western Court:—

"The Court are pleased to direct that the Sessions Judges, in all cases in which they may convict of culpable homicide not amounting to murder, shall invariably mention, in their remarks on the trial, within which of the exceptions noted under section 300 of the Indian Penal Code the culpable homicide was held to come, so as not to amount to murder."

* *Penalty*—Transportation for life, or imprisonment of either description for a term which may extend to 10 years and fine
† *Penalty.*—Imprisonment of either description for a term which may extend to 10 years, or fine, or both.

"*Culpable Homicide not amounting to Murder.*—In reference to the distinctive penal provisions contained in section 304, as noted marginally, Sessions Judges will invariably record their opinion whether the act by which the death was caused was done with the intention of causing death,* or of causing such bodily injury as was likely to cause death;* or with the knowledge that it was likely to cause death, but without any intention to cause death, or to cause such bodily injury as was likely to cause death."†—(*C. O.* 1863, *No.* 5, *February* 5*th.*)

Hurt, Grievous Hurt, Culpable Homicide.—Sections 323, 325, 302, *Penal Code.*

It having been brought to the notice of the High Court that several cases have recently occurred in which Magistrates have disposed of cases as coming under section 325 or 323 of the Penal Code when death has resulted from the injuries inflicted, in some of which, in the opinion of the Court, the parties ought to have been punished for culpable homicide or murder, the Court desire to observe that, in cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge, and convict them of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the sessions for murder, or culpable homicide not amounting to murder.—(*C. O.*, 1869, *No.* 9, *September* 6*th.*)

THE WHIPPING ACT.

(*Act VI of* 1864.)

General Instructions.

C. O., 1864, *No.* 2, *April* 8*th.*

The High Court deem it necessary to call the especial attention of all criminal authorities to the provisions of Act VI of 1864, which has recently been passed by the Governor-General of India in Council, and received the assent of His Excellency the Governor-General on the 18th February last.

2. Section 1 directs that in addition to the punishments described in section 53 of the Penal Code offenders are also liable to whipping under the provisions of the said Code; and it has been declared, under the authority vested in the Lieutenant-Governor by section 10, that this punishment "shall, in the case of an adult," be inflicted on the breech, with a rattan* not exceeding half an inch in diameter. The Government further enjoins that "on all occasions precautions should be taken to prevent the blows from falling on any other part of the person."

Circular of the Government of Bengal to all Commissioners, No. 1329, dated 29th February 1864.

3. Particular care should be taken in marking the distinction between sections 2, 3, and 4. By section 2 it is enacted that for certain specified offences whipping may be administered *in lieu* of any punishment to which the convict may, for any of those offences, be liable under the Indian Penal Code; whereas by section 3 it is enacted that if he has been previously convicted under the Penal Code of any of those offences, and shall again be convicted of the *same* offence, he may be punished with whipping *in lieu* of, or *in addition* to, any other punishment to which he may for such offence be liable under that Code.

4. By section 4, however, it is enacted that, whoever having been *previously* convicted of any of the offences specified in this section of the Act shall be *again* convicted of the *same* offence, may be punished with whipping *in addition* to any other punishment to which he may be liable under the Indian Penal Code.

5. The punishment of whipping under section 2 can be imposed only on conviction of any of the offences therein specified, if the offence have been committed subsequently to the 18th February 1864, the date on which Act VI of 1864 became law.

6. It should be remarked that under sections 3 and 4, both the convictions must be for the *same* offence, which must be one of the offences specified in sections 2 and 4 respectively, in order to render the offender liable to whipping in lieu of, or in addition to, any other punishment; and that under section 4 the punishment of whipping *cannot* be inflicted in lieu of any other punishment, but may be inflicted only in *addition* to such punishment. Sessions Judges should bear in mind that under section 7 no person who may be sentenced to death or to transportation, or to penal servitude, or to imprisonment *for more than five years*, can be punished with whipping.

7. Section 5 provides for the whipping of juvenile offenders convicted of any offence which is not punishable by the Indian Penal Code with death. It should be observed that the punishment of whipping must in such case be administered only *in lieu of* any other punishment; that it may be inflicted for a first or any other offence, but that, as remarked in para. 5, with reference to offences falling under section 2, the offence must have been committed subsequently to the 18th February last, the date of the passing of Act VI of 1864. The whipping of juveniles, as is by section 10 declared, shall be "inflicted in the way of school discipline, with a light rattan."

8. Section 6 provides for exceptional cases not of general application.

9. Under section 7 no female can be punished with whipping. The latter part of this section, which would apply only to Sessions Judges, has already been noticed.

10. Section 8 declares that no officer under the grade of a Subordinate Magistrate of 1st class shall pass a sentence of whipping unless he shall have been expressly empowered by the Local Government to pass such a sentence.

11. Under section 9, in cases in which a sentence of whipping is passed under sections 3 and 4 in *addition to imprisonment*, if the sentence be open to revision by appeal to a Superior Court, it must not be inflicted until 15 days from the date of such sentence, or, if the appeal be preferred within that time, until the sentence be confirmed by the Superior Court; but if no appeal be preferred, it should be inflicted immediately on the expiry of the 15 days, or, in the case of an appeal, immediately on the receipt of the order of the Court confirming the sentence, if such order shall not be received within the 15 days.

12. With reference to section 9 of Act VI of 1864, the Court deem it expedient to point out that all sentences of whipping are appealable in the manner prescribed in sections 408, 409, 412 of the Code of Criminal Procedure.

13. It has been already pointed out that the Lieutenant-Governor has, under the power vested in him by section 10, declared that the rattan not exceeding half an inch in diameter shall be employed in the whipping of adults, and that the punishment shall be inflicted on the breech. It therefore only remains to remark that the maximum of punishment is 30 stripes; that the whipping must be inflicted

in the presence of a Justice of the Peace or a Magistrate of any grade; and that, unless the Court shall otherwise order, a medical officer must always be present.

14. In connection with this last provision of the law, the Court would remind all officers that the Governor-General in Council considers that the precaution of having a medical officer present at the time of the infliction of the punishment should be observed in every instance when practicable.

15. Particular attention should be directed to section 11, which prohibits the execution of a sentence of whipping when the offender is not in a fit state of health to undergo that punishment, or the infliction of whipping by instalments.

16. Section 12, prescribes the procedure in cases in which *no part* of a sentence of whipping has been carried into execution for any of the reasons specified in section 11.

17. The Court expect that great care and proper moderation will be exhibited by all officers in exercising the powers vested in them by Act VI of 1864, and that after this full explanation of its provisions no irregularities will occur in carrying them into practice.

[NOTE.—*Sections* 310 *to* 313 *of Act X of* 1872 *must be read with this C. O.*]

In a recent case [1868] certain questions as to sentences of whipping, and the maximum of punishment which can be awarded under section 46 of the Code of Criminal Procedure, were referred to a Full Bench of this Court for determination.

The attention of all officers entrusted with the administration of criminal justice is called to two points which have been decided by the majority of the Judges composing the Full Bench Court.

It has been decided—

I.—That when a person who has not been "previously convicted" (using the term in the sense in which it is used in sec 4, Act VI of 1864,) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of these offences *in addition* to imprisonment or fine for the other or others; but that it is not illegal to sentence him to *one whipping in lieu of all other punishment.*

II.—That when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only *one* whipping, *in addition to* any other punishment to which, under section 314 of the Code of Criminal Procedure, he may be liable.

The Court take this opportunity of impressing upon all officers vested with power to pass sentences of whipping that such sentences should be passed with the utmost caution and with due deliberation; and that if any doubt is felt either as to the legality or propriety (in any particular case) of passing a sentence of whipping, such a sentence ought not to be passed.—(*C. O.*, 1868, *No.* 2, *April 6th.*)

PROCESSES.

Fees for Processes (Magistrates' Courts)

Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Clause II, Section 20 *of the Court Fees' Act*, 1870, *declaring the* FEES *chargeable for Service and Execution of the several* PROCESSES *in the Courts of* MAGISTRATES.

I.—The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, viz.—

		Rs	A	P
(1) Warrant of arrest (see note at foot of rule) ...	For the warrant in respect of one person ...	1	0	0
	In respect of every additional person named therein	0	4	0
(2) Summons	For the summons in respect of one person, or of the first two persons residing in the same place	0	8	0
	In respect of every additional person named therein	0	4	0

[Rule I, clauses 1 and 2, prescribes the fees leviable upon warrants of arrest and summonses. The process is one, whether one or more persons be named therein, and whether such persons reside in one place or not, but an additional fee of 4 annas is chargeable in respect of every person exceeding one named in a warrant, and an additional fee of 4 annas is chargeable in respect of every additional person, not being the second person of more than two residing in the same village, named in a summons. Thus, if the summons include one person

residing in village A and a second person residing in village B, the additional fee is chargeable in respect of such second person.—(*C. O.*, 1874, *No.* 13, *May* 12*th*, *Civil.*)]

			Rs.	A.	P.
(3)	Proclamation for absconding party under section 171, C. Cr. Procedure.	For the proclamation ...	2	0	0
(4)	Proclamation for witness not attending, section 353.		1	0	0
(5)	Warrant of attachment ...	For the warrant	1	0	0
		Where it is necessary to place officers in charge of property attached, for each officer so employed per diem ...	0	4	0
(6)	Warrant of levy of fine or of maintenance to wife, children, &c.	For the warrant	1	0	0
		and a percentage on the amount of fine or maintenance levied, viz. 2 per cent. on sums not exceeding Rs. 100, and where the sum exceeds Rs. 100, then 2 per cent. on Rs. 100, and 1 per cent. on the amount of excess.			
(7)	Written order	For the order	1	0	0
(8)	Injunction	For the injunction	1	0	0
(9)	Notice	For the notice	1	0	0

[Magistrates may follow the principle of rule III of the rules under clause 1, section 20 for the civil courts in realizing court fees in criminal courts.—(*C. O.*, 1874, *No.* 13, *May* 12*th*, *Civil.*)

Rule III.—No process which comes within the operation of rule I shall be drawn up for service or execution except upon an application made to the court for that purpose in writing, on a document bearing upon its face stamps not less in amount than the fee which by rule I is directed to be charged for serving and executing the process so sought to be drawn up. This application may, however, at the option of the party making it, be included in the petition by which he moves the court to order the process to issue; but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps, if any, as are needed for its own validity: and in either case the filing of the application thus duly stamped shall constitute payment of the fee chargeable for the process.

[The charge for boat-hire, when it has to be incurred, is not a court fee realizable by stamps. There is nothing in the rules to introduce a change in the existing practice, and the charge must be borne as heretofore by Government.—(*C. O.*, 1874, *No.* 13, *May* 12*th*, *Civil.*)]

II.—Nothing herein contained shall be deemed to authorize the levying of any fee for any summons to attend as a juror or assessor in a Court of Session, and no fee shall be chargeable on any such summons.

III.—No fee shall be chargeable in advance on any process of a criminal court in any case where the prosecution is on the part of Government; but it shall be competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused, or any of them, in like manner as if such fees had been paid by the prosecutor in the first instance.

IV.—Where any percentage is directed by these rules to be taken upon amounts levied as fines or maintenance, such percentage shall be deducted from the proceeds of any property sold, or shall be paid together with the amount levied, and with the other costs of process as stated in the warrant.

V.—When a proclamation has been issued for an absent witness, if the witness shall afterwards appear, and the court shall be of opinion that such witness had absconded or concealed himself for the purpose of avoiding the service of a warrant upon him, such court may order the witness to pay the cost of the proclamation.

VI.—In districts named in the margin, where the sub-divisional system has not been fully introduced, in every case where a process has to be executed at a distance of more than 25 miles from the court from which it is issued, an addition of one-fourth is to be made to the fee chargeable, and if more than 50 miles, an addition of one-half.

Rajshahye.	Beerbhoom.
Bogra.	Cachar
Dinagepore.	Chittagong.
Maldah	Noakholly
Rungpore.	Singbhoom
Bankoora.	Nowgong.
Sylhet *	Lohardugga.*
Hazareebagh.*	Manbhoom *

* Added by notification published with C. O, 1874, No. 20, August 18th.

Scale of Nazirs' and Peons' Pay.

Extract from Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Clause III, Section 20 *of the Court Fees' Act,* 1870.

The following monthly salaries shall be allowed to the peons and other officers employed in the service or execution of processes in the courts of the Magistrates:—

1*st.*—In the court of the Magistrate of the district—

	Rs.
Court inspector (or nazir) responsible for the due service and execution of all processes in the courts of the several Magistrates at the sudder station, as at present.	
Peons, each	7

2nd.—In Sub-divisional Magistrates' courts—

	Rs.
Court inspector (or nazir) of sub-division, as at present.	
Peons, each	7

Note.—The rates of remuneration for peons provided by these rules are intended to secure the services of men who can read and write. But whenever, on the occurrence of a vacancy, candidates thus qualified shall not be available, the court on whose establishment the vacancy exists may record a declaration to that effect, and may then appoint temporarily some person whom it may consider competent to perform the duties, and who shall be paid at the rate of Rs 5 per mensem in Moonsiffs' courts, and Rs 6 per mensem in all other courts: provided that such appointments, when made by a court subordinate to the District Judge or the Magistrate of the district, shall be subject to the approval of such Judge or Magistrate, and shall cease as soon as duly qualified candidates shall be procurable.

[The intervals and rate of increment which govern the increase of salaries of the establishment to which the officer belongs are applicable under these rules.—(*C. O.*, 1874, *No.* 13, *May* 12*th*, *Civil.*)]

District Establishment of Peons.

Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Section 22 *of the Court Fees' Act*, 1870.

Magistrates' Courts.

1*st.*—The Magistrate of every district shall ascertain the average number of processes issued in a year from his own court and from each of the courts subordinate thereto during three years last past.

[Clause 2, section 20 of Act VII of 1870, clearly indicates that only processes in cases of offences other than offences for which police-officers may arrest without warrant are to be served by peons employed under the Court Fees' Act.—(*C. O.*, 1874, *No* 13, *May* 12*th*, *Civil.*)]

2*nd.*—The peons to be employed in each district shall be in number sufficient for the execution of a like number of processes, each peon being for this purpose considered capable of executing 300 processes per annum.

3*rd.*—In the districts named in the margin, where the peons entrusted with a large proportion of processes have to be conveyed by boat, the number of processes which each peon is expected to serve may be reduced by one-third, and the number of peons to be employed shall be calculated accordingly.

Backergunge.	Luckimpore.
Dacca.	Chittagong.
Jessore.	Dinagepore.
Sylhet.	Mymensingh
Kamroop.	Rajshahye.
Nowgong.	Rungpore.

N.B.—For the districts in the second column the calculation is to be made from May to October inclusive only.

4th.—Where it appears advisable to the Magistrate of the district, he may authorize the appointment of such number of peons on the whole for all the courts in his district as may suffice for executing the total number of processes of those courts, and may from time to time apportion such peons according to need among such courts.

5th.—When it appears to the District Magistrate that the number of processes issued out of any court or courts in the district has increased by 10 per cent., he shall be competent to make a corresponding increase in the number of peons; and if there shall be a diminution to the like extent, or if he should be satisfied that the processes of all or any of such courts can be executed by a smaller number of peons, it shall be his duty to make a reduction accordingly.

Processes in other jurisdictions to be easily legible.

It has been brought to the notice of the Court that it frequently happens, in the case of process issued in one district for service or execution in another, that the seals and signatures on the process are illegible, whereby great inconvenience and delay are caused.

2. It is also necessary and right that in every sentence or order made by a criminal court the jurisdiction of the Judge or Magistrate making it should distinctly appear on the face thereof.

3. The Court is therefore pleased to direct that in every process and every sentence or order (of whatever description) issued by a judicial officer, for whatever purpose it may be issued or made, the name of the district and of the court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such manner that it may be easily read.

4 The Court further directs generally that in all cases all judicial officers shall take care to sign their names distinctly and legibly.—(*C.O.*, 1876, *No.* 4, *March* 13*th.*)

Processes in other jurisdiction with different language to be accompanied by translation into that language or into English.

Inconvenience having resulted in certain cases from processes sent from Bengal to Courts in the Madras Presidency being in Hindoostanee, the Court are pleased, at the

instance of His Honor the Lieutenant-Governor, to issue the following orders on the subject.

2. Warrants issuing out of a Magistrate's Court should be written "in the language in ordinary use in the district in which it is held," that is to say (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a district where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language, or into English. Moreover, in such cases it would be proper that the warrant should always be accompanied by a letter in English requesting its execution.—(*C. O.*, 1872, *No.* 3, *July* 25*th.*)

Holidays how far available for Criminal Courts.

Dusserah Vacation.

Several of the Zillah Judges appear to have entirely closed their Courts on the criminal as well as on the civil side for the period of the Dusserah vacation, and to have abstained during the whole of that period from attending to business, receiving or opening communications from the Superior Court, dispatching returns which were due, or doing any act whatever of an official kind.

Such a practice is justified by nothing in the law or in the orders of this Court: it causes great inconvenience. The Zillah Judges are therefore reminded that, under the circular order (Nizamut Adawlut) No. 8, dated 23rd March 1838, issued under the orders of Government, which has never been rescinded, the Court of Session "must never be closed for the dispatch of criminal business except on those days only when a total cessation from all business is necessary and usual;" and moreover that even on the civil side of their Courts it does not follow that because there is no sitting of the Court, therefore every official duty is to be suspended.—(*C. O.*, 1868, *No.* 4, *April* 2*nd*, *Civil.*)

Circular order No. 8, *of* 23*rd March* 1838, transmits, for information and guidance, the subjoined copy of a letter from the Officiating Secretary to the Right Hon'ble the Governor-General to the Registrar of the Sudder Dewany and Nizamut Adawlut of the Western Provinces, and requests that Judges will strictly attend to the orders therein contained.

"With reference to the correspondence noted in the margin, copies of which are annexed for the information of the Court, I am directed by the Right Hon'ble the Governor-General to request that they will explain to the several Judges subject to their authority that during the Dusserah and Mohurrum vacations their Court must never be closed for the dispatch of criminal business, except on those days only when a total cessation from all business is necessary and usual.

"The Court are accordingly authorised to issue a circular order, directing the observance of this as a standing rule in the several subordinate Courts, and they are requested to see that it is carefully attended to on occasions like the one under notice."

Civil Court Holidays.

The High Court having observed that certain Sessions Judges close their Courts on the Civil Court holidays to the great prejudice of public business, all Sessions Judges and Magistrates in the Lower and Extra Regulation Provinces are reminded that the holidays published by the High Court are for observance in the Civil Courts only, and that the Criminal Courts, as a rule, should be closed on no days when the public treasuries are open. In any case, a trial commenced ought to be finished, although a native holiday intervenes; and Sessions ought not to be interrupted, and the commencement of trials postponed, except on days when native usage absolutely requires the intermission of all business.—(*C. O.*, 1876, *No.* 1, *February* 28*th.*)

A SESSIONS JUDGE QUITTING A DISTRICT TOWARDS THE END OF A YEAR IS REQUIRED TO RECORD HIS OPINION OF THE WORK OF HIS SUBORDINATES.

Instances being of frequent occurrence in which, owing to the removal of Sessions Judges towards the end of the year, and the unacquaintance of their successors with the circumstances of the district, reports are sent up nearly blank; Government have signified a wish that the Court "will frame some rule by which such deficiency of information may not again occur from such a cause, and require Sessions Judges, on removal from the station, to place on record their sentiments and opinions on the administration of those subordinate to them, up to the period of their quitting the office of control." The Court therefore direct that, as laid down for the civil department by paragraph 9 of Circular Order No. 28, dated Lower Provinces, 7th, and Western Provinces, 21st December 1838, the Sessions Judges will invariably, prior to delivering over charge of their offices on quitting a district, record a minute, to be made over to their

successors, containing the particulars referred to, and any other observations or results of experience they may deem necessary or useful. The above rule is also applicable to Magistrates under similar circumstances.—(*C. O.*, 1842, *No.* 103, *January* 25*th*, *W. P.*, *and May* 6*th*, 1842, *L. P.*)

MOOKHTARS, &C., TO RENEW CERTIFICATES.

The High Court deems it necessary to warn Sessions Judges and Magistrates to take care that parties holding certificates as Revenue Agents do not practise as Mookhtars without renewing their certificates in that capacity.—(*C. O.*, 1873, *No.* 8, *August* 19*th.*)

INTESTATE PROPERTY.

It having been brought to the notice of the Court that considerable difference of opinion and practice prevails as to the manner of disposing of "lawaris" property, they communicate the following observations on the subject.

"Lawaris" property.

2. The Court observe that the difficulty appears to arise from the Magistrates confounding "unclaimed property" with the "property of persons dying intestate" (lawaris). With regard to the former, they refer the civil and criminal authorities to clause 16, section 16,* Regulation XX, 1817.

Unclaimed property not to be confounded with the property of intestates.

3. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (lawaris), the Court direct me to observe that section 7, Regulation V, 1799, contains a specific provision, and declares that should no claim be preferred to it for the space of twelve months, an inventory of the property, together with a report of the circumstances of the case, shall be submitted by the Judge to the Governor-General in Council for his orders. Whenever, therefore, any property of that description may come into the hands of a Magistrate, he should forward it immediately to the Judge of the district, to be dealt with in the manner directed in the section of the Regulation above quoted.—(*C. O. No.* 3, *dated* 15*th December* 1837, *L. P.*)

Custody and disposal of the latter.

The Court of Nizamut Adawlut having had under their consideration the means best adapted as checks against the misappropriation of "unclaimed property" and the "property of intestates" coming under the control of the Fouzdary Courts, are pleased to prescribe the adoption of the forms annexed in all future cases of the kind.—(*C. O. No.* 151, *dated* 24*th November* 1843.)

Forms for future cases of both descriptions.

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* Repealed by Act XVII of 1862, but re-enacted in Act V of 1861, sections 26 to 27.

FORM No. 1.

ZILLAH FOUZDARY ADAWLUT.

Register of Unclaimed Property disposable under Clause 16, *Section* 16, *Regulation XX of* 1817.—(*Now Secs.* 25–27, *Act V of* 1861.)

1	2	3	4	5	6	7	8	9	10	11	12
Names of thanas	Description of unclaimed property	Date of arrival at the thana.	Date of sale (if sold) in the mofussil.	Date of arrival at the sudder station.	Date of sale at the sudder station.	Price realized by the sale of the property	Signature of the nazir	Date on which the price realized was paid into treasury.	Receipt and signature of the treasurer	Signature of the Magistrate or other officer	REMARKS
											If the property has been made over to any claimant who has appeared, it is to be stated in the column of remarks Total amount 0 0 0 Realized during the month 0 0 0

FORM No. 2.

ZILLAH FOUZDARY ADAWLUT.

Register of Lawaris Property disposable under Section 7, *Regulation V of* 1799.

1	2	3	4	5	6	7	8	9
Names of thanas.	Names of individuals deceased	Description of property	Date of arrival at the thana.	Date of arrival at the suder station.	Date of dispatch of property to the Civil Court.	Signature of the nazir.	Date of receipt given by the civil authority	REMARKS

The Articles of War, Nos. 102 and 103, vest the administration of the estate of any deceased officer or soldier, or person receiving public pay drawn by any officer in charge of a public department belonging to the army, in the military authorities, whenever there may be no heir or executor of the deceased on the spot at the time of decease,* thereby precluding the jurisdiction of the Civil Courts in regard to the same under clause 7, section 16, Regulation III of 1803, as was notified to the civil authorities by the circular order of the Sudder Dewany Adawlut, No. 96, dated 14th June last.

Estates of deceased officers or other military men. Administration in whom vested.

Accordingly the Court are pleased to modify paragraph 3 of their circular order No. 3, dated 15th December 1837, by directing that whenever any property of the kind described in the preceding paragraph may come into the hands of a Magistrate, he shall, instead of forwarding it, as heretofore, to the Judge of the district, communicate with the officer commanding the regiment, or in charge of the department to which the deceased belonged, and comply with the instructions which such authority may give regarding the disposal of it.—(*C. O. No.* 57, *dated* 25*th April* 1851, *W. P.*)

Course to be adopted by Magistrate.

Arrangement and Disposal of Records of Criminal Cases.

C. O., 1865, *No* 6, *July* 17*th.*

The Court having reason to believe that the terms of the late Sudder Court's circular No. 20, dated 20th August 1857, have in many cases been neglected, are pleased to call the attention of all Sessions Judges and Magistrates of districts thereto, with the view to enforcing for the future a more general observance of its requirements.

2. The circular is reproduced for easy reference.

3. If the Sessions Judges and Magistrates will from time to time visit their record-rooms (as they should), there will, the Court think, be no difficulty in obtaining a proper arrangement of all their records. The Court desire to impress seriously upon all officers the extreme importance of this work, for without a proper arrangement of its records, and a periodical clearance of all old and useless papers, the efficiency of a public office is much impaired. On the other hand, a neglect of this duty in the course of time leads to such confusion as invariably results in an application for an

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* See p. 61.

extra establishment to perform a duty which, if regularity had been enforced in the office, should have been executed without any difficulty by the establishment attached to that office. The subject has recently been brought to notice by certain applications of this nature, which the Court have with considerable reluctance been compelled to submit to Government; but after this warning, the Court wish to inform all Sessions Judges and Magistrates of districts that they expect that the necessity for applications for extra establishments will not arise, and that if any such applications are submitted the Court will be compelled to hold the individual officer personally responsible for an exepnse which must be held to have been caused solely by his carelessness and inattention to orders.

4. Mention of the state of their record-rooms should invariably be made in the criminal reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but require a clear description of the state of each record-room, and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected.

Rules in Circular 20, *dated* 20*th August* 1857, *referred to in paragraph* 2 *above.*

I.—Records of Sessions trials and heinous (*i e.* non-bailable) cases of Magistrates' Courts generally of above 14 years' date may unobjectionably be destroyed, a discretion being exercised at the same time by the Sessions Judges and Magistrates of preserving individual cases or papers on any grounds appearing to them sufficient; cases in which sentences are not expired must invariably be preserved.

II.—Provided that cases in which parties accused have hitherto eluded apprehension shall always be preserved.

III.—The above rules should be acted on from year to year, so that no accumulation may occur beyond a term of 14 years in regard to the records of heinous (*i.e.* non-bailable) cases.

IV.—In regard to the records of the Magistrate's Court, the following may be destroyed yearly, if upwards of two years old, excepting those which the Magistrate may deem it prudent to preserve in consequence of the non-arrest of particular offenders or non-realization of fines. In

cases of the last description the records should be destroyed, at all events, after six years from the date of sentence:—

Security cases, if expired.
Petty (*i.e.* non-bailable) trials.
Act IV of 1840 (re-enacted in Chapter XL; Act X of 1872), proceedings, excepting the decisions and documents, and written statements.
Miscellaneous cases.
Thana diaries.
Police reports, in which no further proceedings followed.
Miscellaneous ruboocarees.
Ditto reports and returns by the nazir.
Copies of perwannahs.
Ditto of ishtahars.
Dispatch books.
Receipt books of the record-room.
Rough order books.
Witnesses' attendance books.
Appeals.
Nazir's records, excepting lotbundees, accounts of money, and ferry ghât papers.
Miscellaneous reports of the jailor.
Miscellaneous petitions.
Periodical statement, except register of petty (*i.e.* non-bailable) cases.
Register of mookhtarnamahs, excepting "general" ones.
Register of miscellaneous cases.
Ditto petitions.

V.—In regard to cases appealed to the Sessions Court, the Sessions Court record of such cases may be periodically destroyed after a term of six years.

Compilation of Medico-legal Reports.

With reference to the accompanying copy of a circular which the Inspector-General of Police has been

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* With a view to facilitate the compilation and circulation, for general information, of complete medico-legal reports of the most important criminal cases, the following instructions are issued:—

On receipt of the memorandum (form No 26) from the Court Officer, showing the result of a case in which a report has been asked for from the Civil Surgeon, the District Superintendent will communicate the final order in the case to the Civil Surgeon in as few words as possible, with a reference to the report above mentioned. Ordinarily it will be sufficient to note whether the accused has been convicted or acquitted; but in all cases where the final order appears to be opposed to the medial evidence, the Civil Surgeon should be furnished with any remarks made in the decision regarding that evidence. These remarks will be communicated to the District Superintendent by the Court Officer when reporting the result of the case.

In sessions cases the Court Inspector will obtain the necessary information through the Government Pleader (who will have access to the records), and will furnish it to the District Superintendent in the same manner as in other cases.

authorized to issue to District Superintendents, the Court, at the instance of His Honor the Lieutenant-Governor, direct all Zillah Judges and Judicial Commissioners to allow the Government Pleaders in their several districts to have access to their decisions in all criminal cases in which medical evidence is taken for the purpose indicated in the circular.

2. The intervention of the Government Pleader will, however, only be necessary in cases where for any reason it may be thought undesirable that this duty should be performed by the Court Inspector to whom it should ordinarily be entrusted.—(*C. O.*, 1869, *No.* 10, *September 22nd.*)

Rates for Copying.

Informs magisterial authorities in the Lower Provinces that the following rates of remuneration for copying documents are to be adopted for the future:—

On account of private parties.

For copying 750 English words	1 rupee.
For examining ditto ditto	8 annas.
For copying and examining 1,840 Vernacular words ...	1 rupee.

On account of Government.

For copying and examining 2,000 English words	1 rupee.
For ditto ditto 4,000 Vernacular words ...	1 „

2. Where applicable, it is not to be understood that the clerks in the Government offices are to be paid for copying on account of Government, but that the rates for Government work given above are to be in force whenever any extra copying work, which it would be impossible for the regular establishment of the offices to get through, has been sanctioned by competent authority.—(*C. O.*, 1861, *No.* 85, *August 5th.*)

Rule regarding Applications for Copies of Papers.

There being reason to believe that specifications of additional documents are sometimes inserted in applications for copies of papers, after the presentation of the application and the passing of an order for granting copies of the papers originally applied for, the Court, with a view to prevent

such a practice, direct that petitioners be in future required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers —(*C. O.*, 1843, *No.* 132, *dated 7th April, L.P.*)

Copies of Letters, &c., from the Sudder Court not to be granted by local authorities.

The Court request that whenever applications are made to the local authorities for copies of any letters from, or resolutions passed by the Court, they will refer the applications to the Court, instead of granting the copies asked for.

This rule is not to be considered to apply to the sentences of the Nizamut Adawlut in criminal trials.—(*C. O.*, *No.* 160, *dated* 19*th April* 1844, *L.P.*)

Copies of Exhibits.

A stranger to the suit has no right to obtain copies of exhibits put in evidence, except with the consent of the person by whom they were produced.—(*C. O.*, 1875, *No.* 6, *June 2nd, para.* 4, *Civil.*)

Forms prescribed for Registers.

No. 1, *Register of Criminal Complaints.*

Complaints should be received at a fixed hour each day, and should be immediately numbered in the order of their receipt. They should then be entered in a book, to be kept in the form annexed. This book should be kept under the special control of the Magistrate himself.—(*C. O.*, 1868, *No.* 5*A*, *September 7th.*)

Register of Criminal Complaints.

Serial No. for month	Date	Name of complainant	Thana.	Offence charged with section of Penal Code	Orders passed	Remarks

No. 2.

Record-keeper's Register.

(C. O, 1843, No 144, August 16th)

1	2	3	4	5	6	7	8
No of cases	Nature of case, that is, heinous, petty, or under what head.	Name of parties	The crime or offence charged	Thana	Month and year	Final order	Record-keeper's remarks.
							Placed in Rack No 1, Bustah No 4

No. 3.

Book of Appeals.

(C. O., 1843, No. 144, August 16th)

No.	Name of appellant	Date of filing appeal.	From whose orders appeal preferred	Abstract of orders passed	Final order passed

No. 4.

Book of References from other Districts.

(C O, 1843, No. 144, August 16th)

No	Name of district	Date of receipt of reference	Substance of reference.	Substance of orders passed	Final order passed

No. 5.

Miscellaneous Matters.

(C. O, 1843, No. 144, August 16th)

No.	Names of parties	Date of filing	Substance of matter.	Substance of order	Final order.

REGISTER OF CRIMINALS CONVICTED OF HEINOUS OFFENCES—*See* PAGES 44-45.

REGISTER OF ATTENDANCE OF WITNESSES—*See* PAGE 36.

REGISTERS OF UNCLAIMED AND LAWARIS PROPERTY—PAGE 62.

REGISTER OF SENTENCE WARRANTS—PAGE 21.

PERIODICAL RETURNS.

MONTHLY RETURNS TO MAGISTRATES AND JUDGES FROM SUBORDINATE COURTS.

C. M., 1870, *No.* 7, *December* 17*th.*

From the Registrar of the High Court of Judicature at Fort William in Bengal, to the Superintendent of Stationery,—(*No.* 3816, *dated Calcutta, the* 17*th December* 1870.)

With a view to enable the civil and criminal authorities subordinate to Civil and Sessions Judges to make periodical returns to the latter in such forms as shall be available for the preparation of the *quarterly* returns enjoined on such Judges by circular order No. 31, dated 4th November last, the Court have prepared *slip forms* (A, B, C, & D) as per margin, of which specimens are sent herewith, and direct me to request you will be so good as to provide at once a sufficient supply of the same for the use of Subordinate Judges and Moonsiffs, as well as of District Magistrates and Sub-divisional Officers.

Forms, Civil and Criminal.

A. Statement of *civil* work in the Court of Subordinate Judge or Moonsiff, as the case may be.
B. Statement of appeals before the Courts of Subordinate Judges.
C. Statement of miscellaneous work. (Two forms bear this letter, one for Subordinate Judges, the other for Moonsiffs).
D. Statement of offences reported and persons tried.

2. As regards the *civil* forms (A, B, & C) * * *
[See volume of CIVIL circular orders.]

3. Form D, which is *criminal*, will be required by Sub-divisional Officers, and a specimen in Bengali and Urdoo* is accordingly forwarded.

4. As the above return will be required to be made *quarterly*, and as two copies will be necessary for each officer, one for his office draft and the other for the dispatch copy, eight copies would be necessary, to which might be added four copies to provide for accidents and other contingencies. It will therefore be sufficient if twelve copies of each form are provided by you as a year's supply for each officer requiring them.

* * * * * *

6. In requesting you in the first paragraph of this letter to lay in a sufficient stock of these statements, the Court are particularly anxious to avoid a very large stock of Vernacular slips being at once printed. It is their intention to direct Judges and Magistrates, in making their indents, to specify the number of slip statements that they will require in English and in the Vernacular, and, after these forms have been in use a short time, you will probably not find much difficulty in estimating, with tolerable exactness, the number of both kinds which you will require to keep in store.

**P.S.*—A set of these forms, when printed or lithographed, should be sent for record in this office.

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* *Note.*—The only Urdu Judgeships are Bhagulpore, Gya, Patna, Sarun, Shahabad, and Tirhoot: the rest may be supplied with Bengali forms.

Circular Memo. No. 7, dated 17th December 1870.

Copy forwarded to all Zillah Judges and District Magistrates for information and guidance, with the request that, in making their indents upon the Superintendent of Stationery, they will pay particular attention to the instructions given to that officer in the 4th paragraph of the annexed letter, and to invariably inform him of the number of slip statements required by them in English and the Vernacular.

D.—(CRIMINAL.)

Statement of offences reported, and of persons tried, convicted, and acquitted for each offence in the district of in the quarter.

Designation of officers.	Number of offences reported during quarter.	Number of persons under trial during quarter.	Discharged without trial.	Acquitted	Convicted,	Remaining under trial.	REMARKS
1	2	3	4	5	6	7	8

MONTHLY STATEMENT SHOWING AVERAGE DURATION OF CASES.

Average duration of cases before the Magisterial Authorities in Zillah *from the date of apprehension or attendance on summons to that of disposal, for the month of* 18

(Prescribed by C. M., 1873, No. 1, January 8th.)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	Cases in which the agency of the Police was employed.									Cases in which the agency of the Police was not employed.				
	Number of cases.	Number of days pending in moffussil.	Number of days pending before the Magistrate.	Total number of days.	Average time occupied in moffussil.	Average time occupied before the Magistrate.	General average.	Longest time a case was pending.	Shortest time a case was pending.	Number of cases.	Number of days pending.	Average time.	Longest time.	Shortest time.
Total ..														

The 18

Magistrate.

The object of the average duration statement prescribed in circular memorandum No. 1, dated 8th January 1873, is to enable the District Magistrate to fill up column 15 of judicial statement No. 3 (annual). Accordingly those persons only should be included in the former who would properly come into columns 3 to 6 of the latter as "brought to trial."—C. M., 1873, No. 2, February 28th.

Quarterly Statements.

Blank Quarterly Statements not to be submitted to High Court.

The Court direct that in future blank statements be not sent up with the quarterly returns, as they only cumber the office. Whenever, therefore, the whipping statement, or the statement of solitary confinement, is blank, a note to that effect will be entered at the back of the statement Nos. 1 to 5 in the column of remarks, and the blank statements will not be sent up.—(*C. O.* 1868, *No.* 3, *April* 16*th.*)

Sessions Statements D, E (formerly I, II).

C. O., 1868, *No.* 4, *May* 6*th.*

Referring to the periods at which sessions of jail delivery now take place, and to the various changes which have been introduced by the Code of Criminal Procedure and the circular orders of this Court, the returns at present submitted by the Sessions Judges are no longer perfectly adapted to the purpose for which they are intended, information on some important points not being found in them at all, and the statements being, on the other hand, encumbered with figures which may be found in the Magistrates' returns, and which it is not necessary to repeat. The rules relating to the holding of the criminal sessions also appear to be susceptible of improvement.

2. The High Court has consequently determined that the returns of the Court of Session, not relating to its appellate business, should be submitted at the close of each actual sessions, and should be so altered in form as to exhibit more conveniently the result of the sessions operations.

3. But as the Court of Session must frequently sit for the purposes of appellate jurisdiction in order to the prompt decision of appeals and petitions coming before it, the returns of appellate business must continue to be submitted periodically; and the Court are of opinion that such statements may now be required not oftener than quarterly, in the same manner as the civil returns are now transmitted. The form of these returns has also been modified.

4. The statements, therefore, which the Courts of Session will hereafter submit (except the annual statements which will be dealt with in a separate order) are as follow:—

[Forms I, II, since superseded by criminal statements D, E, pages 75 to 77.]

III, IV and V, jail delivery statements. In the form which accompanies this circular order

III, IV [now III], will be submitted within a week after the close of each sessions. [For No. V see next circular.]

No. III is designed to exhibit the results of one sessions at a single view. In it will be shown the cases of all accused persons who were in jail or on bail at the commencement of the sessions, awaiting trial before the Court of Session, and the mode in which each case and person was disposed of.

5. The High Court has reason to believe that trials are sometimes too lightly postponed. It cannot be too often pointed out that a further detention of an accused person in jail for perhaps two months is in itself no trivial infliction, and is only justified when there is apparently a good case against the prisoners, and when the Judge is satisfied that, for the ends of justice, it is necessary to postpone the trial.

6. The High Court, therefore, directs that at each periodical session all persons awaiting trial be brought before the Judge in open court, and if the Government prosecutor should not be prepared to go to trial in any particular case, that he should be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown. When any trial is postponed, the ground of postponement is to be shortly stated in the column of "remarks" in statement No. III.

7. Offences are to be stated as concisely as possible, with the section of the Indian Penal Code (or other law) applicable, in the form given.

8. When solitary confinement is awarded, the fact (specifying the period) is to be stated in red ink in the column of remarks opposite the name of the prisoner so sentenced.

9. A sentence passed in addition to any other sentence in a different case passed at the same sessions, or one which is to take effect on the expiration of another sentence which the prisoner may be undergoing, is to be similarly indicated.

10. Cases will be entered in the order of trial, so as to enable the Judge's clerk to place each case in the statement at the conclusion of the trial.

11. The smaller form given on the reverse side of this statement is intended to show the number of witnesses and others who have come before the court at each sessions, and the time occupied in disposing of the cases collectively.

12. The existing rule under which, in all districts, the sessions are to be held in each alternate month is abrogated, and the number of sessions, and the time of holding them, will now be left to the discretion of each Sessions Judge, to be determined according to the varying circumstances of his district and the state of business therein.

13. The Judge will accordingly, in the first week of December in each year, fix the number of sessions to be held in the year following, and the dates on which respectively they are to begin (the number varying with the estimated or average number of trials, and not being less than six or more than ten in each year); and the Magistrate of the district, in communication with all the Subordinate Magistrates who exercise the power of committing to the sessions and obtaining from them the particulars of all cases committed by them, will prepare and submit to the Zillah Judge, two days before the commencement of each sessions, a calendar of all such cases in the form annexed, which will be the basis of the Sessions Judge's calendar (statement No. III).

14. The document now misnamed a calendar will be discontinued, and the names of the witnesses should be placed on the back of the charge sheet. The observations or judgment of the Magistrate in committing the prisoner will always go up in original with the record,

where, with the original depositions, they should be read by the Judge before the trial Abstracts of the evidence are considered unnecessary, and they are at times misleading

15 The Magistrates will be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing sessions, in order to avoid the needless detention of accused persons for prolonged periods

16. Whenever a commitment is made, intimation will be immediately given to the Court of Session, through the Magistrate of the district, by a letter in the annexed form. It will be unnecessary for the Court of Session to send any answer fixing a date for the trial. But the Judge will be guided by the information which he thus receives in estimating the time which it will be necessary to devote to the criminal sessions, and consequently at what period he will be able to take up civil business thereafter.

17. Prosecutors and witnesses will be bound over to appear "at the next criminal sessions commencing on "

18. But it will be the duty of the Magistrate, in order to prevent hardship and unnecessary detention to such persons, so to arrange the coming on of cases before the court of session that such parties may not be brought from their homes to the sudder station before they are actually required, and that they should have written notice of the specific date on which their attendance will be necessary, and it should be carefully explained that failure to attend will be severely dealt with.

19. The directions herein contained for committing Magistrates are to be observed so far as they are applicable by civil courts and other authorities committing persons for trial at the sessions.

20. The rules now communicated will take effect from the 1st July next, and the Zillah Judges will be good enough to fix the sessions for the latter half of the year in the first week of June. All such arrangements for the sessions (both on the present occasion and afterwards yearly) are to be immediately reported to this Court for approval, but may be carried out unless the disapproval of the Court be communicated.

Form of Letter to be sent by Committing Officers through the Magistrate of the District to the Judge.

From

Magistrate of

To the Sessions Judge of

Sir,—I beg to report that I have this day committed, to take his trial before the court of sessions the person named in the margin on the charge specified below.

I have, &c.,

A. B.,

Magistrate (as the case may be)

Charges.

(should follow.)

(*Form of District Magistrate's Calendar.*)

Calendar of accused persons for trial before the Court of Session.

Sessions of 18

Number of case.	Committing officer.	Number and name of accused.	Charges and section, I. P. C.	Date of offence.	Date of apprehension or appearance to summons.	Date of commitment.	In jail or on bail.

D.—PART I.—MAGISTRATES.*

Statement of offences reported and of persons tried, convicted, and acquitted in the district of in the quarter of the year 18

1	2	3	4	5	6	7	8	9
Designation of Magistrates.	Number of offences reported during quarter.	Number of persons under trial during quarter.	Discharged without trial.	Acquitted.	Convicted.	Committed.	Remaining under trial.	REMARKS.
Total ...								

* Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court.—(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

D.—PART II.—Magistrates.

Statement of miscellaneous cases in the district of
for the quarter of the year 18
(No. of persons)

(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

1	2	3	4	5	6	7	8	9
Designation of Magistrate.	Possession.	Nuisance.	Maintenance.	Sureties for the peace.	Sureties for good behaviour.	Order with property.	Cases under section 415, C.C.P.	

Magistrate of the District.

D.—PART II.—Court of Session.†

Statement of commitments in the district of
for the quarter of the year 18

1	2	3	4	5	6	7	8
Designation of Committing Officer.	Commitments pending at close of last quarter. (Persons.)‡	Commitments made in the quarter. (Persons.)‡	Persons acquitted or discharged.	Persons convicted.	Sentenced capitally.	Remaining for trial.	Remarks.
							Note.—When a prisoner is convicted of murder and sentenced to death, a note to that effect, with date of the reference to the High Court, is to be made in this column.

* Sessions Judges and District Magistrates are to submit their quarterly statements separately and independently direct to the High Court.—(*G. L.*, 1876, *No.* 2, *March* 25*th*.)

† Sessions Judges and District Magistrates shall submit their quarterly statements D, E, direct to the High Court separately and independently.—(*G. L.*, 1876, *No.* 2, *March* 25*th*.)

‡ Persons, not cases.—(*C. M.*, 1874, *No.* 3, *June* 3*rd*.)

E.

Statement showing the result of appeal and revision in criminal cases in the district of during the quarter of the year 18

1	2	3	4	5	6	7	8	9	10	11
Appellate Tribunal.	Number of appellants or petitioners under section 295, C. Cr. P.	NUMBER OF PERSONS.								REMARKS.
		Appeals or applications rejected.	Sentences confirmed.	Sentences reversed.	Sentences enhanced.	Sentences reduced or otherwise altered.	Further inquiry ordered.	Referred to High Court.	Pending.	
Court of Sessions										
Magistrate of district ..										
Total ...										

Magistrate of the District. *Sessions Judge.**

SESSIONS STATEMENT No. —(TO BE SUBMITTED AFTER EACH SESSIONS.)

Calendar of accused persons tried or brought before the Court of Session of the district of at the jail delivery held in the month of 18

Name of accused.	† Offences—Nature of.	DATE OF				Verdict or opinion of assessors or jury ‡	Sentence passed.	REMARKS.
		Offence.	Apprehension.	Commitment.	Sentence.			

* Sessions Judges and District Magistrates shall submit their quarterly statements, D, E, direct to the High Court separately and independently.—(*G. L.*, 1876, *No.* 2, *March* 25*th.*)

† When a person is charged with several offences and convicted of one only, the head of charge on which he has been convicted is to be indicated by red underlining.—(*C. O.*, 1868, *No.* 8, *November* 27*th.*)

‡ In case of jury trials, Sessions Judge to note in column of remarks whether he concurs in the jury's verdict.—(*C. O.*, 1863, *No.* 7, *March* 11*th.*)

In cases of acquittals, observations regarding the propriety of the commitment to be discontinued.—(*C. O.*, 1874, *No.* 4, *July* 23*rd.*)

Index numbers to prisoners.—*See* page 104.

Sessions Quarterly Statement No. 3.—(Formerly III, IV.)

C. O., 1867, *No.* 5, *July* 12*th.*

The Judges of the High Court have directed me to enclose, for your information and guidance, new forms of the sessions statements* Nos. 4 and 5.

2. Copies of the new forms will be supplied to you from time to time on your requisition on application to the Registrar; and you are requested to take care that your supply of them may not run short, as it is the wish of the Court that no other forms should be used.

3. I am to convey to you the following instructions for the use of the forms.

They are both, you will observe, in Europe paper of folio size and on separate leaves. It is intended that one of the forms should be used for each trial reported, the particulars indicated in the several columns being thus exhibited on the first page, and paper of the same size being pasted on where the nature of the case requires further space.—(*Paragraphs* 4, 5, *rescinded by C. O.*, 1870, *No.* 10, *July* 12*th*)

The Judges shall always state on the back of the form the grounds on which any person punishable with death has been sentenced to any punishment other than death (section 287, Code of Criminal Procedure).

And the High Court desire that Sessions Judges will state in the same place the reasons which have prompted a specially light or specially severe sentence in any particular case; and also the reasons of any difference of opinion between the Judge and the assessors or jury.

When the stock of these forms has been exhausted, the Judges will submit, instead of statements Nos. 3 and 4, a new statement No. 3 in the accompanying form, in which the case of every accused person awaiting trial at the commencement of the sessions shall be entered.

The column headed verdict, &c., shall contain a statement whether the accused was tried with a jury or assessors, and the verdict or opinion specifying whether such verdict or opinion was unanimous, or, if not, the particulars of such difference.—(*C. O.*, 1870, *No.* 10, *July* 12*th.*)

Sessions Statement No. 3.—(To be submitted after each Sessions.

Calendar of accused persons tried or brought before the Court of Session of the district of at the jail delivery held in the month of 18

Name of accused.	Offences—nature of	Date of				Verdict or opinion of assessors	Sentence passed.	Remarks.
		Offence	Apprehension	Commitment.	Sentence.			

* For new forms of Nos. 1, 2, now D, E, see circular order No. 4, dated 6th May 1868, and circular order (civil) 1870, No. 31, November 4th; No. 5 has been discontinued by circular order No. 6, dated 9th September 1868.

6. The charge, as entered in column 5 of the abstract statement, need not contain the whole of the charge *verbatim*, but must be given with sufficient fulness and certainty, omitting merely formal parts; and it will be borne in mind that these statements are submitted with a view to enable the Court to exercise the power of revision vested in it under the XXIInd Chapter of the Code of Criminal Procedure.

7. In the 6th column, if the accused be convicted on the charge as laid, the entry need be only "as charged;" but if he be convicted on an amended charge, that charge should be shortly stated, and the section of the Indian Penal Code which applies referred to.

8. In the 7th column it should be stated whether the jury were unanimous in their verdict, or what the majority was; also the names of the jurors should be given, together with any recommendation to mercy or other special matter contained in the verdict. And in trials not by jury, the opinion of the assessors should be given *seriatim*.

9. The several leaves comprising the trials at any one jail delivery should be made up within one outside wrapper, of which a specimen is also forwarded.

10. The forms in hand should be used as far as possible for office copies, and you are requested to report, at the expiration of three months, the extent to which the time of clerks in your office has been economised by the plan now introduced.

The following demi-official was addressed to all Sessions Judges in continuation of the above circular order:—

DATED CALCUTTA, THE 24TH SEPTEMBER 1867.

I am desired by the Judges of the 5th Bench to call your attention to the circular order dated 12th July last, No. 5, which relates to the mode in which the new abstract statements of sessions trials are to be prepared. It could hardly have been supposed that misunderstanding could occur on this point; but as some Zillah Judges appear to have wholly failed to apprehend the true meaning of the circular and of the forms themselves, it has been thought better to offer a few words of guidance upon the subject, which, as to those Judges who have carried out the order correctly, will have only the effect of confirming them in the right practice.

The tabular or front-side of the statement No. 4, for instance, is not meant to contain a regular indictment, but the charge in abstract; *e.g.*—

MURDER of Oposhto Dass, section 302, Indian Penal Code; or

THEFT in a dwelling house (of Ali Kurim), section 380, Indian Penal Code; or

GIVING FALSE EVIDENCE in a judicial proceeding, viz. in a trial before the Magistrate of Hooghly, in having stated "I saw the prisoner A. B. strike C. D.," &c (*not giving the false evidence in full, but so much of it as will make the abstract of the charge intelligible*) under section 193, Indian Penal Code, and so on.

Column 6, in like manner, is to contain shortly the offence proved. If that offence be the offence charged, the words "as charged" will be sufficient; if some other offence, then it is to be CONCISELY given as "culpable homicide under section 304, Indian Penal Code," or "theft under section 379," or "giving false evidence otherwise than in a judicial proceeding, section 193," and so on.

In column 7, it is not necessary to say at length that the jury unanimously find that A. B. is guilty of the offence specified, viz. that he has, &c., &c., and that he has thereby, &c., &c.; but it should be stated that "the jury (or a majority consisting of 6 out of 7, or as the case may be,) found the prisoner guilty of the first charge, and not guilty of the second," or as the case may be—the dissentient juror being marked with the letter D opposite to his name—and under this the Judge will write his concurrence in, or disapproval of the verdict, but without giving his reasons in this place, and then will follow the sentence, shortly stated.

Where the trial has not been by jury, the opinions of the assessors should be given so as to show the view of each, the reasons not being stated at full length, *e.g.*—

"The assessor Ramlol Parree considered the charge made out; he remarks that the witnesses "spoke with an air of truth, that there was no reason to suppose the charge malicious, and that "the prisoner's *alibi* wholly broke down."

"The assessor Gholam Ghous also thought the charge proved, but said that the accused "being a very young man, some allowance might be made, &c."

QUARTERLY STATEMENTS.

C. O., 1873, *No.* 11, *September* 10*th.*

C. O. No. 31, dated 4th November 1870, paras. 7 to 9.

The orders noted on the margin are hereby rescinded, and the quarterly statements D and E will henceforth be submitted by the Sessions Judges to the High Court in the revised form now circulated, commencing with those for the 3rd quarter of 1873.

2. Statements received in other than the printed forms supplied by the Superintendent of Stationery will be returned, and the district will be dealt with as if no statements had been received.

* *e.g.* Magistrate of the District
A. Jones, Esq., C.S., 1st class.
B. Williams, Esq., 1st class.
Baboo M. N. Dass, 1st class.
C. Howell, Esq., C.S., 2nd class.
M. Anwar Ali, 2nd class.
&c, &c

3. Column 1 of statement D will comprise the names of all officers exercising criminal authority in the district; the letters "C. S." being inserted after the names of covenanted officers. Magistrates, other than the Magistrate of the district, will be designated according to their powers, as Magistrates of the 1st class, of the 2nd class, or of the 3rd class; and not as Joint-Magistrates, Assistant Magistrates, or Deputy Magistrates.

4. The benches of Magistrates which have sat in the quarter under report will also be entered here. The names of the Magistrates who have served on the benches will be shown in the column of remarks.

[As Honorary Magistrates in some districts are now exceedingly numerous, but, as a general rule, they singly try few cases, the Court

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These particulars may generally be filled in by an intelligent clerk; a little instruction may at first be necessary, but the officer, if he is fit for his situation, ought soon to learn to do the work without assistance. A neat, not diffuse, handwriting is essential for the mechanical portion of the work. Much time and trouble is saved to the superior court by attention to this matter, and work of a different character will not be tolerated.

The abstract statement on the reverse side should be prepared by the Judge himself, unless he has the good fortune to possess a very capable head clerk; but even the best ministerial officer can scarcely convey the pith of a case with the same force and condensation as the officer who has tried it.

It is not to contain the judgment or the summing up, nor any argument, nor a repetition of the charge, but simply the leading circumstances in evidence, the view which the Judge has taken of the case, and, in some instances, the reasons for passing a particular sentence, *e.g.* for not inflicting capital punishment, or for passing a sentence apparently inadequate.

But the statement should be so condensed as not in ordinary cases to exceed the space allowed on the turn-over.

The object of the Court in reviewing the abstract statements is not to criticise the performance of the Court of Sessions, but to ascertain that the trial has been regular, the conclusion just, and the sentence warranted by law.

It is considered that minute objections, whether of law or of fact, may be properly left to appellants, and that in revision it is only needful to know that substantial justice has been done

But the Sessions Judges will not for this reason omit to make their proceedings on the trial full, complete, and formal, as far as form implies deliberation and attention to the rights of the accused as well as those of the prosecutor

Some of the Zillah Judges have referred to the preparation of those abstracts as an additional duty cast upon them. It is believed, however, that after a little practice the trouble will not be great. It may also be observed that many of the Judges may relieve themselves by reducing the length of their summing up or directions to the jury, which are frequently given at quite needless length. The printed forms are invariably to be employed, and the ruling and manuscript preparation of written headings is strictly forbidden.

You are requested to be good enough to acknowledge demi-officially the receipt of this memorandum, and to take care that it is carefully read and thoroughly understood by your clerks.

directs that in the first column of statement D, part I, the Honorary Magistrates who have acted singly may be entered together, and their cases exhibited in one line. But benches of Magistrates, however composed, should be exhibited separately, one line to each, thus—

Sudder bench of Magistrates————————————————

Ferozepore „ „ ————————————————

Honorary Magistrates sitting singly————————————

(*C. M.*, 1874, *No.* 1, *February* 12*th.*)

5. Columns 3, 4, and 5, will be filled up according to the instructions contained in the circular order No. 7, dated 10th April 1873 [see next circular], to which it may be added that column 5, "acquitted," will show all dismissals (as under sec. 205) and discharges (as under sec. 496) which operate as acquittals. New trials ordered under section 328 will appear in column 8. The persons shown as "remaining under trial" at the close of one quarter should be included (though not separately exhibited) in column 3 of the return for the following quarter, as "persons under trial." Cases decided by Municipal Commissioners should not be entered in this statement. Statement D.

6. This statement is intended to comprise all appeals preferred either to the Sessions Judge or to the Magistrate, without detail of the officers from whom the appeals may be preferred; and also references made to the High Court under section 296, Act X of 1872, either by the Sessions Judge or by the Magistrate. Persons whose cases are shown as "pending" in column 10 should be included in the number entered in column 2 of the ensuing quarter's returns. Statement E.

7. After the Magistrate has prepared and signed part I of statement D, and filled up his portion of statement E, the statements will be submitted to the Sessions Judge, who will enter in part II, statement D, the result of trials disposed of by him, and in statement E the result of appeals preferred before his Court. He will then forward the completed return to the High Court.

In modification of para. 8 of circular order No. 11, dated 10th September 1873, the Court directs that Sessions Judges and District Magistrates shall, until further orders, submit the quarterly statements D and E separately, and independently, direct to the Court.

2. Each will fill up the portion concerning him in the present forms. In part II of statement D the Sessions Judge will continue to give the information hitherto given regarding commitments. But this will now become for Magistrates a statement of miscellaneous cases, and information regarding the following classes of cases will be given:—

Column (2) possession, (3) nuisance, (4) maintenance, (5) sureties of the peace, (6) sureties for good behaviour, (7) order with property.

3. The Superintendent of Stationery has already (see General letter No. 1, dated the 9th March 1876,) issued forms for this purpose. [*General Letter*, 1876, *No.* 2, *March* 25*th.*]

In continuation of general letter No. 2 of the 25th March last, the High Court directs that in filling up column 7, part II of quarterly statement D, District Magistrates will at present enter only

cases coming under section 518 of the Code of Criminal Procedure as distinguished from section 521, and under no others.

2. Cases coming under section 415 of the Criminal Procedure Code, where they occur, should be shown in these statements, pending the issue of revised forms, in a space ruled off the column of "Remarks."

3. Magistrates will understand that the last quoted section is not to be used for the purpose of enabling police-officers, or Magistrates themselves, to interfere in questions of right to property in dispute.—(*General Letter*, 1876, *No.* 3, *May* 22*nd.*)

8. Both Magistrates and Judges are called upon to see that the statements are prepared *neatly*, as well as correctly, in respect of the entries made, and that they are not disfigured by slovenly or bad writing. On such cases occurring, the statements will be liable to be returned.

9. The column of remarks, which in each statement is of ample size, will contain the mention of any cases or particulars which do not appear to be fairly provided for in other columns, and will also contain brief explanations of any noticeable results appearing on the face of the returns, specially of such as, if unexplained, might lead to erroneous conclusions: in short, any comments that will tend to throw light on the figures.

10. This return will not interfere with the submission of the statement No. 3 prescribed by circular order No. 10, dated 12th July 1870.

E.

Statement showing the result of appeal and revision in criminal cases in the district of during the quarter of the year 18

1	2	3	4	5	6	7	8	9	10	11
		Number of Persons.								
Appellate Tribunal.	Number of appellants or petitioners under section 296, C. Cr. P.	Appeals or applications rejected.	Sentences confirmed	Sentences reversed.	Sentences enhanced.	Sentences reduced or otherwise altered.	Further inquiry ordered.	Referred to High Court.	Pending.	Remarks.
Court of Session ...										
Magistrate of District										
Total ...										

Magistrate of the District. *Sessions Judge.*

INSTRUCTIONS ON QUARTERLY STATEMENT D—(CRIMINAL).

C. O., 1873, *No.* 7, *April* 10*th.*

The following instructions should be observed in the preparation of quarterly statement D:—

1. The return has reference to judicial work alone, the High Court having no supervision of police work in any shape.* No person who has not appeared personally or by agent in the Magistrate's Court is to be included in the statement; but all persons who have appeared, whether in obedience to summons, warrant, or other process, or voluntarily, to answer a criminal charge, should be entered in column 3, *number of persons under trial during quarter.*

2. Column 4, *discharged without trial*, will contain only persons whose discharge under sections 195 and 215, Act X of 1872, is not an acquittal.

3. Column 5, *acquitted*, will contain absolute acquittals, such as under sections 211 and 220, and also the cases of persons in respect of whom the dismissal of a complaint, under section 208, operates, by section 212, as an acquittal; and persons who, having appeared to answer complaints withdrawn under section 210, are thereupon discharged, as such complaints cannot again be entertained.

4. Columns 6 and 7 admit of no mistake, and call for no explanations.

5. All persons discharged from bail, taken under section 125, without appearing before a Magistrate, will cease to appear in these returns.

EXPLANATION AS TO DISPROPORTION OR APPARENT DISPROPORTION OF ACQUITTALS TO CONVICTIONS.

The late Sudder Court's circular† of the 21st May 1862, No. 14, (or No. 98 of the published series) is hereby recalled.

2. The High Court reserves to itself the power of calling for explanations whenever the returns exhibit results which appear to show want of circumspection in the issue of warrant or summons by Magistrates.

3. This order will not absolve the Magistrate of the district from the duty of maintaining a watchful and intelligent control over the proceedings of his subordinates in this respect.—(*C. O.*, 1873, *No.* 8, *May* 19*th.*)

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* Appeals from orders of District Superintendent of Police, which are heard by Magistrate in his executive, not judicial capacity, are to be excluded from returns to High Court. So also fines on ministerial officers for neglect of duty are not to be entered in Magistrate's statements.—(*C. O.*, 1868, *No.* 9, *December* 15*th.*)

† Prescribing that, whenever the number of persons acquitted to convicted was disproportionately large, which was considered to be the case whenever it amounted to one-half of the persons tried, a note in explanation of the cause thereof was to be invariably submitted by the Magistrate with the quarterly returns.—(*C. O.*, *No.* 98, 21*st May* 1862.)

Responsibility of Magistrates and Judges as to control over Subordinate Courts.

With reference to the altered form of the quarterly returns of criminal business now required from the Magistrates and Sessions Judges, a larger share of responsibility now rests upon the local authorities than formerly. The Court thinks it necessary to bring the fact prominently to the notice of the Sessions Judges and Magistrates of districts, who are accordingly requested to inform themselves thoroughly, from time to time, of the mode in which business is transacted by their subordinates. Such inquiry is far more effective than the mere inspection of statements.—(*C. O.*, 1871, *No.* 8, *July 27th.*)

Magisterial officers employed executively.

With reference to details as to the manner in which the time of magisterial officers has been employed, the High Court only requires, in the case of officers whose duties are partly judicial and partly executive, the number of days devoted to the former, specifying, where there is judicial duty of more than one kind, the time given to each kind.—(*C. M.*, 1873, *No* 5, *June* 10*th.*)

Annual Report on Criminal Administration.

Circular No. 4, *dated Calcutta, the* 2*nd February* 1871.

The following directions are issued for the guidance of Sessions Judges in the preparation of their criminal administration reports, with reference to the new forms prescribed in circular order No. 32, dated 8th November 1870, and in supersession of previous orders on the subject.

The report is to contain, *inter alia*, the following matters:—

Original Jurisdiction.

Statement of number of offences ascertained to have been committed in year under report, as compared with previous year.

Offences.	1869.	1870.
Against the State or public (Chapters VI to XV, I. P. Code).		
Against the person (Chapters XVI, XIX, XX to XXII).		
Against property (Chapters XVII and XVIII).		
Under special laws		
Total .		

Statement showing the number of persons brought to trial during the year, as well as those convicted, acquitted, or discharged, and remaining under trial.

Offences	Persons.				
	Under trial	Acquitted or discharged	Convicted.	Died, escaped, transferred.	Remaining under trial
Against the State or public (Chapters VI to XV, I. P Code).					
Against the person (Chapters XVI, XIX, XX to XXII).					
Against property (Chapters XVII and XVIII)					
Under special laws					
Total					

Statement showing the number of Witnesses and their Attendance.

Courts in detail.	Number of Witnesses Discharged.			
	On 1st day	On 2nd day.	On 3rd day.	After 3rd day.
Magistrate of the district				
Joint-Magistrate				
Assistant Magistrate ..				
Deputy Magistrate				
Total				

Appellate Jurisdiction.

Table showing appeals from sentences and orders of Courts of Original Jurisdiction, preferred in the district, disposed of, and pending in the year under report, as compared with the previous year.

From sentence or order of	Preferred.		Disposed of.				Remaining for trial.	
	1869	1870.	1869.		1870.		1869.	1870.
			Before Court of Session.	Before Magistrate of the district.	Before Court of Session.	Before Magistrate of the district.		
Magistrate of the district .								
Joint-Magistrate ..								
Assistant Magistrate ...								
Deputy Magistrate								
Total ...								

Table showing the number of appeals preferred to the Court of Session, or to the Magistrate of the district, from the Subordinate Criminal Courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided.

Appeals from sentence or order of	Number of appeals preferred	Ratio of appeals to sentences or orders	Number of sentences or orders affirmed.	Ratio of affirmed to passed
District Magistrate				
&c., &c. ...				

Separate reports, similar in character to that submitted with the civil administration report, should be submitted in respect of all officers employed in the administration of criminal justice. In respect of every such officer, figures should be shown exhibiting the amount of work done, the extent to which he has been employed in other duties, the result of appeals from his decisions, and also the result of commitments made by him, in so far as such result indicates any want of discretion on his part or the converse. To such results should be appended the opinion of the District Magistrate in respect of the officer, which should be followed in each case by that of the Sessions Judge.

In prescribing these materials for the administration report, the Court has expressly refrained from directing the use of any particular form of covering letter, considering that such a matter is best left to the judgment of the several authorities concerned.

Explanations of the Annual Statements.

C. O., 1870, *No.* 32, *November 8th.*

In supersession of previous orders on the subject of annual statements, the High Court of Judicature hereby direct that the undermentioned statements shall be submitted in accordance with the instructions following. Under the orders of Government, the Collectors will furnish the several Zillah Judges with the particulars required to complete those parts of the returns which relate to revenue courts and revenue cases.

2. This statement is to be furnished by the Judge from the information in his own office and that which he will obtain from the several courts—civil, revenue, and criminal. From the returns received from the several districts under the authority of the Court, a collective statement will be prepared by the Court for transmission to the Government. Attention is directed to clauses (*a*) and (*b*) of the Government resolution given at foot. This return is to be forwarded as soon as it can be prepared without delaying, for this purpose, the other statements now ordered, which do not differ very widely from those previously in use.

B. 1.
Annual.
Statement showing the various judicial tribunals, original and appellate, existing in the province of on the last day of the year.

3 This statement is likewise to be submitted annually by the Zillah Judge, who will receive it from the Magistrate of the district. It will comprise all cases in whatever criminal court they may have been disposed of, one figure showing the cases of each kind which have been before *all the courts* of the district. Accused persons who have been committed for trial, but whose cases have not been disposed of by the court of session, will be entered as "under trial."

B. 2.
Statement of offence reported and of persons tried, convicted, and acquitted for each offence in the district of in the year 18

4. This statement, *annual*, will be prepared in the office of the Magistrate of the district on data furnished to him by his subordinates; it will then be forwarded by him to the Zillah Judge, who will add the figures for his own court and transmit it to the High Court, where a complete statement for the whole of the territories under the Court's jurisdiction will be prepared.

B. 3.
Statement showing the general result of criminal trials in the tribunals of the various classes in the district of in the year 18 .

5. This return will be furnished *annually* in the same manner as the last preceding, and will require careful attention.

B. 4.
Statement showing the punishments inflicted by various criminal tribunals in the district of in the year 18 .

6. This statement will be submitted annually by the Zillah Judge, who will first receive from the Magistrate of the district the return of his own court.

B. 5.
Statement showing the result of appeal and revision in criminal cases in the district of in the year 18 .

(*a*) All heads of departments are to fill up and supply the detailed tables proposed by the Committee, *only* so far as the entries can be compiled from the materials which have been collected for the more concise tables which have been hitherto supplied with the administration reports or annual reports of each department. No information which is not already in the offices is to be sought for.

(*b*) They are to throw into the shape required by the new statistical tables all such items and the entries in such columns as can be reliably compiled from the registers and details which have already been kept up, and only these.

ANNUAL STATEMENT No. 1—(CRIMINAL.)

Classification of Courts and Jurisdictions. Their Outturn of Work, Cost, &c.

1	2	3	4	5	6	7	8	9	10	11	12
								Total Number of Judges.			
								European			
Class of tribunal, distinguishing those which exercise powers in one department from those exercising powers in two or three departments, and those consisting of paid from unpaid Judges.	Number of judicial divisions.	Average area of each division in square miles.	Average population of each division.	Number of tribunals.	Constitution of tribunals, stating number of Judges in each, and Jury or Assessors, if any.	Judicial powers of each tribunal, original and appellate.	Prescribed qualification of Judges previous to appointment.	Covenanted	Commissioned military officers.	Uncovenanted.	Native.
Designation of Courts, &c, (C. M., 1874, No 1, January 24th) according to Criminal Procedure Code.											
Magistrates of the third class exercising criminal powers only { Paid ... / Unpaid ...											
Ditto ditto ditto criminal and civil powers ...											
Ditto ditto ditto criminal and revenue powers											
Ditto ditto ditto criminal, civil, and revenue powers											
Ditto second class exercising criminal powers only .. .											
Ditto ditto ditto criminal and civil powers											
Ditto ditto ditto criminal and revenue powers .											
Ditto ditto ditto criminal, civil, and revenue powers											
Benches of Magistrates											
Magistrates of the first class exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers ..											
Ditto of districts exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers											
Ditto exercising the powers described by section 36, Act X of 1872											
Courts of Session											
Total ...											

ANNUAL STATEMENT No. 1—(CRIMINAL.)—(*Continued.*)

Class of tribunal, distinguishing those which exercise powers in one department from those exercising powers in two or three departments, and those consisting of paid from unpaid Judges.	13	14	15	16	17	18	19	20	21	22	23
	Average Annual Salary of each paid Judge.		Total cost of tribunals.	Net receipts from stamps.	Executive or other functions exercised by the same officers.	Average number of days in the year devoted to judicial work.	Average number of advocates attached to each tribunal.	Number of cases decided during the year.			
	European.	Native.						Criminal.	Civil.	Revenue.	Appeal.
Designation of Courts, &c., (C. M., 1874, No. 1, January 24th) according to Criminal Procedure Code.											
Magistrates of the third class exercising criminal powers only { Paid ... / Unpaid ...											
Ditto ditto ditto criminal and civil powers											
Ditto ditto ditto criminal and revenue powers ...											
Ditto ditto ditto criminal, civil, and revenue powers											
Ditto second class exercising criminal powers only											
Ditto ditto ditto criminal and civil powers											
Ditto ditto ditto criminal and revenue powers ...											
Ditto ditto ditto criminal, civil, and revenue powers											
Benches of Magistrates											
Magistrates of the first class exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers											
Ditto of districts exercising only criminal powers											
Ditto ditto ditto also revenue powers											
Ditto ditto ditto also revenue and civil powers											
Ditto exercising the powers described by section 36, Act X of 1872											
Courts of Session											
Total ...											

JUDICIAL STATEMENT 2—(CRIMINAL.)

Statement of offences reported and of persons tried, convicted, and acquitted for each offence in the district of in the year 18

Description of offences.	Number of offences reported during the year.	Number of persons* under trial during the year.	Acquitted or discharged.	Convicted.	Died, escaped, transferred.	Remaining under trial.	REMARKS.
1	2	3	4	5	6	7	
According to the classified list which accompanies. It will not of course be necessary to enter all the headings in the classified list in this column, but only the headings descriptive of offences actually committed. These will be entered according to the order given in the list which follows the arrangement of the chapters in the Penal Code. [For prescribed schedule, see next circular order, No. 3 of 2nd February 1871.]							The number committed out of those remaining under trial should be noted in this column for remarks.

* A person accused under more than one head of charge in the same trial should be returned only once, viz. under the principal head of charge.—(C. O., 1875, No. 3, June 3rd.)

The total number of persons shown in statement No. 2 as "acquitted or discharged" (column 4) should agree with the total of the corresponding columns (9 and 10) in statement No. 3, and the persons "convicted" (column 5) according to the former statement should agree with those shewn in column 11 of the latter statement, care being taken to include in the comparison the figures under "sessions courts" in statement No. 3. The same remark applies to the columns headed "died, escaped, transferred," and "remaining under trial," at the end of the year.

The number of *committed* persons shown in the column of remarks, statement No. 2, should always correspond with the number shown in statement No. 3, as "remaining at the end of the year" *before the sessions court*, unless there is a sufficient reason for a discrepancy, which should be stated.—(*C. M.*, 1876, *No. A*, *January* 15*th*, *paragraphs* 2 *and* 3.)

NOTES ON LAST STATEMENT IN C. O., 1871, No. 3, FEBRUARY 2ND, PARAGRAPHS 2 AND 3.

Judicial Statement (*Criminal*) 2.

The classification list alluded to in column 2 of this statement, of which a copy accompanied the circular order in question, is merely that given by the Statistical Committee, and was clearly not intended to be an exhaustive, but rather a suggestive, list of offences. It is nowhere recognised or prescribed in the circular itself, and was not meant entirely

to supersede the existing schedule provided by circular order No. 19, dated 31st December 1861. The Court have, however, determined to reconstruct that schedule on the principle of the classification list, and to adapt it to its requirements by a rearrangement of its descriptive headings according to the order of the sections of the Indian Penal Code. This has been done in the new schedule circulated herewith.

As regards "attempts," the Court are of opinion that when the attempt is one for the punishment of which express provision is made (such as attempts to commit murder, culpable homicide) whereby, in fact, such attempts are constituted substantive offences, they should come in their order accordingly; but that attempts punishable under the general provisions of section 511, Indian Penal Code, should be inserted where they occur, immediately after the offences at which they are attempts. Finally, offences under special and local laws should be exhibited, arranged alphabetically, as indicated in the accompanying list, after the offences classified as above mentioned.

SCHEDULE of offences under Act XLV of 1860.

No.	Description of Offences.	Section of Penal Code applicable.
1	Offences against the State	Sections 121 to 130.
2	" relating to the Army and Navy ...	" 131 to 140.
3	Offences against public tranquillity ... Unlawful assembly	" 143 to 145, 149 to 151, 157, 158.
4	Offences against public tranquillity ... Rioting, &c.	" 147, 148, 152, and 153 to 156.
5	Offences against public tranquillity ... Affray	" 160.
6	Offences ... By public servants	" 161 to 169.
7	Offences ... Relating to public servants ...	" 161, 170, and 171.
8	Contempt of lawful authority	" 172 to 190.
9	False evidence, or subornation, &c., of the same	" 193 to 200.
10	Offences against public justice	" 201 to 229.
11	" relating to coin	" 231 to 254.
12	" " to stamps	" 255 to 263.
13	" " to weights and measures...	" 264 to 267.
14	" affecting public health	" 269 to 278.
15	" " safety	" 279 to 289.
16	" " convenience	" 290 and 291.
17	" " decency or morals	" 292 to 294.
18	" relating to religion	" 295 to 298.
19	Murder	" 302 and 303.
20	Culpable homicide	" 304.
21	Abetment of suicide	" 305 and 306.
22	Thugee, &c.	" 311.
23	Causing miscarriage Attended with aggravating circumstances	" 312 to 315.
24	Causing miscarriage Other cases	" 312.
25	Injury to unborn children	" 316.
26	Exposure of infants	" 317.
27	Concealment of births by secret disposal of the dead body ..	" 318.
28	Hurt ... ... With aggravating circumstances ...	" 325 to 331, and 333.
29	Hurt ... ... Other cases	" 323, 324, 332, and 334 to 338.
30	Wrongful restraint	" 341.
31	" confinement	" 342 to 348.
32	Criminal force or assault	" 352 to 358.

SCHEDULE of Offences under Act XLV of 1860.—(Continued.)

No.	Description of Offences.	Sections of Penal Code applicable.
33	Kidnapping or forcible abduction ... With aggravating circumstances ...	Sections 364, 366, 367.
34	Kidnapping or forcible abduction ... Other cases	„ 363, 365, 368, 369.
35	Slavery	„ 370 and 371.
36	Buying or selling a minor for the purpose of prostitution ...	„ 372 and 373.
37	Forced labour	„ 374.
38	Rape	„ 376.
39	Unnatural offences	„ 377.
40	Theft ... ... With aggravating circumstances ...	„ 382.
41	Theft ... ... Other cases	„ 379 to 381, and 401.
42	Extortion ... With aggravating circumstances ...	„ 386 to 389.
43	Extortion ... Other cases	„ 384 and 385.
44	Robbery... ... With hurt	„ 394.
45	Robbery... ... Other cases	„ 392.
46	Dacoity ... ... With murder	„ 396.
47	Dacoity ... ... With attempt to cause death or grievous hurt	„ 397.
48	Dacoity ... ... Other cases	„ 395, 399, 400, and 402.
49	Criminal misappropriation of property	„ 403 and 404,
50	„ breach of trust	„ 406 to 409.
51	Receiving or habitually dealing in stolen or plundered property ...	„ 411 to 414.
52	Cheating	„ 417 to 420.
53	Fraudulent deeds and disposition of property	„ 421 to 424.
54	Mischief ... ... With aggravating circumstances ...	„ 429 to 433, and 435 to 440.
55	Mischief ... ... Other cases	„ 426 to 428, and 434.
56	Criminal trespass ... Resulting in death or other grievous hurt	„ 459 and 460.
57	Criminal trespass ... For commission of serious offences ...	„ 449, 450, 451, 452, 454, 455, 457, and 458.
58	Criminal trespass ... Other cases	„ 447, 448, 453, 556, 461, and 462.
59	Forgery or uttering or possessing forged documents or papers ...	„ 465 to 471, and 474.
60	Counterfeiting or making or possessing a counterfeit seal, &c., for purposes of forgery.	„ 472 to 476.
61	Fraudulently destroying or defacing a will or other documents ...	„ 477.
62	Using a false trade or property-mark and knowingly selling property so marked.	„ 482, 486, 487, and 488.
63	Conterfeiting or making, or possessing a die, plate or instrument for counterfeiting a trade or property-mark.	„ 483 to 485.
64	Removing, destroying, &c., a trade or property-mark with intent to cause injury	„ 489.
65	Criminal breach of contract of service	„ 490 to 492.
66	Offences relating to marriage	„ 493 to 498.
67	Defamation	„ 500 to 502.
68	Criminal intimidation, insult or annoyance... Resulting in death or other grievous hurt	„ 506.
69	Criminal intimidation, insult or annoyance... Other cases	„ 504 to 510.
70	Attempts	„ 511.
71	Other offences not included in the above specifications, such as—	
	1. Abkaree laws, breach of—	
	2. Aliens, breach of laws relating to—	
	3. Chowkeedaree cases under Act XX of 1856 and Act V of 1861.	
	4. Customs laws, breach of—	
	5. Ferry laws, breach of—	
	6. Lotteries, breach of law relating to—	
	7. Post Office laws, breach of—	
	8. Printing Presses, breach of laws relating to—	
	9. Railways laws, breach of—	
	10. Salt laws, breach of—	

Prisoner accused under more than one head of charge.

C. O., 1875, *No.* 3, *June* 3*rd.*

As it appears that in the preparation of the annual and quarterly statements submitted to the Court, it has been commonly the practice to return the "persons under trial" on the principle of exhibiting an accused person under each of the heads of charge entered against him,* thus causing the same person to be counted according to the number of charges exhibited, and the apparent number of persons reported to be different from the actual number, the Court is pleased to lay down the following instruction for general observance by Magistrates.

* *Vide* judicial statement No. 2, column I.

2. An accused person should be exhibited under the principal charge only, unless he happens to be accused of entirely distinct offences, supported by separate evidence, in which case the trial would be separate, and the results independent.

Index Numbers to Prisoners.

The High Court observes that there is [1870] a diversity of practice in numbering the accused; some officers giving fresh number to the prisoners in each case, while others continue the series throughout the year.—(*C. O.*, 1870, *No.* 7, *March* 11*th.*)

JUDICIAL STATEMENT 3—(CRIMINAL.)

Statement showing the general result of criminal trials in the tribunals of various classes in the district of in the year 18

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	Number of persons dealt with.							Persons disposed of.								
		Brought to trial during present year.														
Class of Tribunals.	Remaining at end of last year.	Under arrest by police.	Upon warrant.	On summons.	Voluntarily.	Received by transfer.	Total.	Discharged without trial.	Acquitted.	Convicted.	Committed or referred.	Died, escaped, or transferred.	Remaining at end of year.	Average number of days during which each case lasted.	Number of witnesses who attended.	Remarks.
Unpaid Magistrates																
Bench Magistrate																
Local and subordinate paid Magistrates																
Full power Magistrates exercising jurisdiction throughout the district.																
Chief Magistrates of districts																
Total Magistracy ...																
Sessions Courts																
High Court																
Grand Total ..																

With reference to column 15 of this statement, headed "average number of days during which each case lasted," the High Court consider that the average duration should be calculated from date of complaint or information to date of conviction, acquittal, or discharge; and where there are several persons accused in the same case in respect of whom final orders are not passed at the same time, as will sometimes happen, then to the date of last order.—(*C. O.*, 1871, *No.* 3, *February 2nd, paragraph* 4.)

In calculating the duration of a case with a view to filling up column 15 of statement No. 3, the starting point to be taken is not the date of "complaint" or "information," but that of *apprehension* or *attendance on summons;* the information relates to *persons* "brought to trial" within the meaning of columns 3 to 6, judicial statement No. 3, and not to *cases* in the abstract, where a complaint is merely made or information laid.

Accordingly a general return should be made at the close of each year by the District Magistrate and submitted to the High Court with the annual statements of the same nature as the monthly return prescribed by circular memorandum No. 1, dated 8th January 1873. Similar information should be added with reference to the sessions courts, *mutatis mutandis*, that is to say, the *actual* number of days occupied should be given, commencing from the date of commitment, without distinguishing cases in which the agency of the police has been employed from those in which it has not.—(*C. M.*, 1876, *No. A*, *January* 15*th*, *paragraphs* 4 *and* 5.)

JUDICIAL STATEMENT

Statement showing the punishments inflicted by various

Class of Tribunal.	PERSONS SENTENCED TO												PERSONS ORDERED TO FIND OR GIVE		
		TRANSPORTATION.			IMPRISONMENT.				FINE		WHIPPING				
					Rigorous.										
	Death.	For life.	For a term.	Penal servitude.	With solitary confinement.	Without solitary confinement.	Simple.	Forfeiture of property.	With imprisonment.	Without imprisonment.	In addition to other punishment.	In lieu of other punishment.	Surety of the peace.	Recognizance.	Sureties for good behaviour.
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

4.—(CRIMINAL.)

Criminal Tribunals in the district of *in the year* 18

DETAIL OF PUNISHMENT.																					
FINE.									IMPRISONMENT										WHIPPED.		
									15 days.		6 months.		2 years.		7 years.		Above 7 years.				
Rs. 10 and under.	Rs. 50 and under.	Rs. 100 and under.	Rs. 500 and under.	Rs. 1,000 and under.	Above Rs. 1,000.	Total amount of fines.	Amount realized.	Amount paid by way of compensation.	Rigorous.	Simple.	Rigorous.	Simple.	Rigorous.	Simple.	Rigorous.	Simple.	Rigorous	Simple.	10 stripes and under.	20 stripes and under.	30 stripes and under.
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37

Where the aggregate of the smaller columns 1 to 15 (excluding columns 9 and 11) of judicial statement No. 4 falls short of the number of convictions given in statements Nos. 2 and 3, the difference should be accounted for by reference to chapters 39, 40, and 41* of the criminal procedure, or otherwise, as the case may be.

Local nuisances. Possession. Maintenance of wives and families.

To save calls for explanation, the Sessions Judge should see that the aggregate number of persons fined, imprisoned, or whipped, corresponds exactly with the details under those heads respectively in statement No. 4.—(*C. M.*, 1876, *No. A*, *January* 15*th*, *paras.* 6 *and* 7.)

JUDICIAL STATEMENT 5.—(CRIMINAL.)

Statement showing the result of appeal and revision in criminal cases in the district of during the year 18

Tribunal.	Number of appellants or persons applying for revision under section 295, C. Cr. P.	Number of persons.								Remarks.
		Appeals or applications rejected.	Sentences confirmed.	Sentences modified.	Sentences reversed.	Proceedings quashed.	Further inquiry or evidence ordered.	Cases referred for revision to High Court.	Pending.	
1	2	3	4	5	6	7	8	9	10	11

JUDICIAL STATEMENT 11.

(No. 11 of Annual Series, both Civil and Criminal.)

Statement showing employment of Juries and Assessors in the Civil and Criminal Courts of the province of *in the year* 18 .

Classes of courts in which jurors or assessors are employed, distinguishing criminal from civil courts.	Established or average number of jury or assessors in each case, and prescribed qualification.	Number of cases tried by jury.	Number of cases with assessors.	Jury Trials.		Assessors' Trials.		Note showing in what classes of cases juries and assessors have been principally employed.	Remarks.
				Cases in which the Judge approved of the verdict.	Cases in which the Judge did not approve of the verdict.	Number of cases in which Judges agreed with assessors.	Number of cases in which Judges differed from assessors.		
1	2	3	4	5	6	7	8	9	

This statement will be compiled under the direction of the Zillah Judge from the records in his office. It will usually be a blank, except in regard to the Court of Session, and the penultimate column may be filled by reference to the orders of the local Government in this particular.

In publishing these forms, the Court desire to impress it upon the Zillah Judge and other officers concerned in the preparation of them that returns of this kind, unless they are correct and framed in exact compliance with instructions, are not merely valueless, but mischievous. It will be expected, therefore, that pains will be taken to render returns correct as possible.—(C. O. 1870 No. 39. *Civil and Cri*

ALPHABETICAL INDEX

TO

CIRCULAR ORDERS

OF THE

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CRIMINAL.

A.

PAGE.

ACCUSED—
- District Magistrates' calendar of—persons for trial before the Court of Session ... 75
- Examination of—prior to commitment 6
- Sessions calendar of—persons tried or brought before the Court of Session 77-78
- When several persons are—of the same offence, and the case is one for the Sessions, all should be committed 7-8

ACQUITTAL—
- Explanations as to disproportion or apparent disproportion of—to convictions . 83
- Finding in case of—on ground of being lunatic 41-43

ACT—
- General instructions on the Whipping— 50-54

ACT XLV OF 1860—
- Schedule of offences 91-92

ADMINISTRATION—
- Annual report on criminal— 84-86

AFFIRMATIONS—
- Witnesses', interpreters', and jurors'—and oaths 31

AGENTS—
- Revenue—and mookhtars to renew certificates 61

ANNUAL—
- Report on criminal administration 84-86
- Statements, explanations 87
- Statement No. 1 (Judicial), Classification of Courts and Jurisdictions. Their outturn of work, cost, &c. 88-89
- Statement No. 2 (Judicial), Offences reported and persons tried, convicted, and acquitted of each offence 90-92
- Statement No 3 (Judicial), General result of criminal trials in the tribunals of various classes in the district 94
- Statement No. 4 (Judicial), Punishments inflicted by various criminal tribunals in the district 96-97
- Statement No. 5 (Judicial), Result of appeals and revision in criminal cases in the district 98
- Statement No. 11 (Judicial), Employment of juries and assessors in the Civil and Criminal Courts of the province 99

PAGE.

APPEALS—
Book of— 68
Evidence to be recorded clearly and legibly, otherwise copies to accompany record in—to High Court 32
In what cases—not to be forwarded to High Court by Jail Superintendents ... 14
List of criminal—heard by the Sessions Judge 12
Result of—to Sessions Court .. .. ib.
Statement showing result of—and revision in criminal cases 77, 82, 98
To be accompanied by copy of judgment and not of sentence merely ... 11
To High Court from prisoners in jail 13-14
To Sessions Courts from prisoners in jail 11-12
Table showing—from sentences and orders of Courts of Original Jurisdiction preferred in the district, disposed of and pending in the year under report, as compared with the previous year 86
Table showing the number of—preferred to the Court of Session or to the Magistrate of the district, from the subordinate criminal courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided... 86

APPELLATE—
Supplementary evidence before—Court 14-15

APPLICATIONS—
Rules regarding—for copies of papers 66-67

ASSESSORS—
Jurors and— 9-10
Statement showing employment of juries and—in Civil and Criminal Courts ... 99

ATTENDANCE—
Daily register of—of witnesses 35-36, 68
Statement showing number of witnesses and their— 85

AWARD—
Possessory—under section 530, Criminal Procedure Code 47

AUTHORITY—
Local—not to grant copies of letters, &c., from the Sudder Court 67
Limits of—of police in certain cases 5

AVERAGE DURATION OF CASES—
Monthly statement showing— 71

B.

BEHAVIOUR—
Security for good— 46-47

BOOK OF APPEALS 68
BOOK OF REFERENCES FROM OTHER DISTRICTS ... ... ib.

C.

CALENDAR—
Of accused persons for trial before the Court of Session 75
Of accused persons tried or brought before the Court of Session 77-78

CAPITAL SENTENCE—
Returns to warrants of— 23

CERTIFICATES—
Mookhtars, &c., to renew— 61

CHARGE—
Of perjury... 43
Prisoners accused under more than one head of— 93
Prosecutions for false—s 48-49

CIVIL PROCESS—
Witnesses arrested under a warrant to be treated as persons under—... ... 40

PAGE.

CIVIL SURGEON—
Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil Surgeon 39

CLASSIFICATION—
Of Courts and Jurisdictions—Their outturn of work, cost, &c. 89

COMMITMENT—
Examination of accused prior to— 6
Made whilst Sessions are pending 8
Sessions Courts' remarks on— 8-9
Sessions Court statement D, part II of— 76
To High Court of European British subjects 1-4
To Sessions. When several persons are accused of the same offence, and the case is one for the Sessions, all should be committed 7-8
Warrant of— 17
Warrant of—for transportation 17-18
What papers to be included in record of— 7

COMMITTING OFFICER—
Form of letter to be sent by—through the Magistrate of the district to the Judge 74

COMPILATION—
Of medico-legal reports 65-66

COMPLAINT—
Register of criminal— 67

CONFESSIONS—
Recording of— 38-39

CONVICTS—
Warrant of imprisonment in case of military— 22

CONVICTIONS—
Explanations as to disproportion or apparent disproportion of acquittals to— .. 83
In—of culpable homicide, exceptions under section 300, Penal Code, to be specifically noted 49-50
Of military employé to be intimated to Military Department 45
Register of—of heinous offences 44-45

COPY—
Evidence to be recorded legibly and clearly, otherwise—to accompany record in appeals to High Court 32
Of exhibits 67
Appeals to be accompanied by—of judgment and not of sentence merely ... 11
Of letters, &c., from the Sudder Court not to be granted by local authorities ... 67
Rules regarding applications for—of papers 66-67

COPYING—
Rates 66

COURT—
In what cases appeals not to be forwarded to High—by Jail Superintendents 14
Evidence to be recorded legibly and clearly, otherwise copy to accompany record in appeal to High— 32
Result of appeals to Sessions— 12
Copy of letters, &c., from the Sudder—not to be granted by local authorities .. 67
Supplementary evidence before Appellate— 14-15
Sessions—s' remarks on commitment 8-9
Appeals to High—from prisoners in jail 13-14
Appeals to Sessions—from ditto 11-12
Calendar of accused before the—of Session 75
Sessions—s' statement D, part II, Commitments 76
Calendar of accused persons tried or brought before the—of Session... ... 77-78
Annual statement I, Classification of—and jurisdictions 88-89
Statement showing employment of juries and assessors in Civil and Criminal—s 99
Commitment to High—of European British subjects 1-4
Diary of witnesses in attendance in Magistrates'—s 36
High—letter regarding the recording of confessions 38-39

PAGE.

COURT—(*Continued.*)
Monthly returns to Magistrates and Judges from subordinate—s 69, 70
Blank quarterly statements not to be submitted to High— 72
Responsibility of Magistrates and Judges as to control over subordinate—s ... 84
Magistrates'—s. Fees for process 54-56
Ditto. District establishment of peons 57-58
Holidays how far available for criminal—s 59-60
Civil—holidays 60

CRIMINAL—
Annual report on—administration 84-86
List of—appeals heard by Subordinate Judges 12
Register of—complaints 67
Register of—s convicted of heinous offences 44-45, 68
Arrangement and disposal of records of—cases 63-64
Statement showing the result of appeal and revision in—cases 77, 82, 98

CULPABLE HOMICIDE—
In convictions of—exceptions under section 300, Penal Code, to be specifically noted 49-50
Hurt, grievous hurt,— 50

CURRENCY OF SENTENCE—
On escaped prisoners 24

D.

DEATH WARRANT—
How to provide for date of execution 22
Form 18

DEPARTMENT—
Convictions of military employé to be intimated to Military— 45

DETENTION OF WITNESSES—
Mode of calculating—... 36-37

DIARY—
Of witnesses in attendance in Magistrates' Courts 36, 68

DISTRICT ESTABLISHMENT OF PEONS (Magistrates' Courts) 57-58

DUSSERAH VACATION— 59-60

E.

ENQUIRY—
Police—. Limits of authority of police in certain cases 5

ESTABLISHMENT—
District—of peons. Magistrates' Courts 57-58

EUROPEAN BRITISH SUBJECTS—
Under commitment to High Court 1-4

EVIDENCE—
Recording 32-33
Recording—in warrant cases 37
Supplementary—before Appellate Court 14-15
To be recorded legibly and clearly, otherwise copies to accompany records in appeal to High Court 32

EXAMINATION—
Of accused prior to commitment 6
Prompt—of witnesses after their appearance 34-35
Witnesses 33-34

PAGE.

EXCEPTIONS—
Under section 300, Penal Code, in convictions of culpable homicide to be specifically noted 49-50

EXECUTION—
Death warrant how to provide for date of— 22
Of sentence 16

EXHIBITS—
Copies of 67

EXPLANATION—
As to disproportion or apparent disproportion of acquittals to convictions ... 83
Of the annual statements 87

F.

FALSE CHARGES—
Prosecution of— 48-49

FEES—
Process—. Magistrates' Courts 54-56

FINDING—
In case of acquittal on ground of being lunatic 41-43

FINES—
Levy of— 23-24
Warrant for levy of— 18-19

FORMS—
Annual statement No. 1, Classification of Courts, &c. 88-89
Book of appeals 68
Book of references from other districts ... ... *ib.*
Calendar of accused persons tried or brought before the Court of Session ... 77-78
Death warrant 18
District Magistrates' calendar of accused persons for trial before the Court of Session 75
Judicial statement 2. Offences reported and persons tried, convicted, and acquitted for each offence 90
Judicial statement 3. General result of criminal trials in the tribunals of various classes 94
Judicial statement 4. Punishments inflicted by various criminal tribunals ... 96-97
Judicial statement 5. Result of appeals and revisions in criminal cases ... 98
Judicial statement 11. Employment of juries and assessors in Civil and Criminal Courts 99
Letter of commitment to be sent through the Magistrate of the district to the Judge 74
Miscellaneous matters 68
Prescribed for Registers 67-68
Register—Attendance of witnesses 36, 68
——— Criminal complaints 67
——— Heinous offences 44-45, 68
——— Lawaris property 62, 68
——— Record-keepers'— 68
——— Sentence warrants 21, 68
——— Unclaimed property 62, 68
Statement D, part I, Magistrates'. Offences reported and persons tried, convicted, and acquitted 70, 75
Statement D, part II, Magistrates'. Miscellaneous cases 76
Statement D, part II, Sessions Courts'. Commitments ... ... *ib.*
Statement E. Result of appeal and revision in criminal cases 77, 82
Statement. Number of offences ascertained to have been committed in year under report as compared with previous year (Original Jurisdiction) 84
Statement. Number of persons brought to trial during the year as well as those convicted, acquitted, or discharged, and remaining under trial (Original Jurisdiction) 85
Statement. Number of witnesses and their attendance ... ... *ib.*
Table. Appeals from sentences and orders of Courts of Original Jurisdiction, preferred, disposed of, and pending in the year under report, as compared with the previous year. (Appellate Jurisdiction) 86

PAGE.

FORMS—(*Continued.*)
Table. Number of appeals preferred to the Court of Session, or to the Magistrate of the district, from the Subordinate Criminal Courts, the ratio of appeals to decisions, the number of decisions affirmed, and the ratio of affirmed to decided. (Appellate Jurisdiction) 86
Warrant. Commitment 17
Ditto. Commitment for transportation ... ... *ib.*
Ditto. Commitment of European British subject 4
Ditto. Levy of fine 18-19

G.

GOOD BEHAVIOUR—
Security for— 46-47

GOVERNMENT—
Proceedings of the—of India in regard to sentences of transportation ... 26-30

GRIEVOUS HURT—
Hurt—Culpable homicide 50

H.

HEINOUS OFFENCES—
Register of convictions of— 44-45, 68

HIGH COURT—
Appeals from prisoners in jail 13-14
Blank quarterly statement not to be submitted 72
Commitment of European British subjects 1-4
Evidence to be recorded legibly and clearly, otherwise copies to accompany record in appeal 32
In what cases appeals not to be forwarded to—by Jail Superintendents ... 14
Letter regarding the recording of confessions 38-39

HOLIDAYS—
Civil Courts' 60
How far available for Criminal Courts 59-60

HOMICIDE—
Hurt, grievous hurt, culpable— 50
In convictions of culpable—exceptions under section 300, Penal Code, to be specifically noted 49-50

HURT 50

I.

INDEX—
Numbers to prisoners 93

INDIA GOVERNMENT—
Proceedings in regard to sentences of transportation 26-30

INSTRUCTIONS—
On the annual judicial statement 3 95
Do. do. do. 4 98
Do do. do. 11 99
Do. Quarterly statement D (Criminal) 83
Do. Whipping Act (General) 50-54

INTERPRETERS—
Oath and affirmation 31

INTESTATE PROPERTY 61-63

J.

PAGE.

JAIL—

Appeals from prisoners in—to High Court 13-14
Ditto ditto —Sessions Court 11-12
In what cases appeals not to be forwarded to High Court by—Superintendents ... 14

JUDGE—

Form of letter to the—by Committing Officer 74
List of criminal appeals heard by Sessions— 12
Monthly returns to Magistrate and—from Subordinate Courts 69-70
Responsibility of Magistrate and—as to control over Subordinate Courts ... 84
Sessions—to record his opinion of the work of his subordinates when quitting a district towards the end of year 60-61

JUDGMENT—

Appeals to be accompanied by copy of—and not of sentence merely 11

JURISDICTION—

Processes in other—to be easily legible 58
Ditto ditto with different language to be accompanied by translation into that language or into English 58-59
References in revisional— 15-16

JURORS—

And Assessors 9-10
Oath and affirmation 31
Statement showing employment of—and Assessors in Civil and Criminal Courts 99

JURY—

Charge to— 98

L.

LANGUAGE—

Processes in other jurisdiction with different—to be accompanied by translation into that—or into English 58-59
Warrants of imprisonment 17

LAWARIS—

Register of—property 62, 68

LETTER—

Copy of—s, &c., from the Sudder Court not to be granted by local authorities ... 67
Form of—to be sent by Committing Officer through the Magistrate of the district to the Judge 74
High Court's—regarding the recording of confessions 38, 39
Sessions Judge's— ditto ditto ditto 38
To Superintendent of Stationery regarding Magistrates' and Judges' monthly returns 69

LEVY OF FINES— 23, 24
Warrant for— 18-19

LIST—

Of criminal appeals heard by the Sessions Judge 12

LUNATIC—

Finding in case of acquittal on ground of being— 41-43

M.

MAGISTERIAL OFFICERS—

Employed executively 84

	Pages
Magistrate—	
Calendar of accused persons for trial before the Court of Session	75
Diary of witnesses in attendance in the—'s Court	86
District establishment of peons	57-58
Form of letter to be sent by committing officers through the District—to the Judge	74
Monthly returns to—s and Judges from Subordinate Courts . ..	69-70
Process fees. —s' Courts	54-56
Responsibility of—s and Judges as to control over Subordinate Courts ...	84
Statement. Miscellaneous cases	76
Ditto. Offences reported and persons tried, convicted, and acquitted ...	70, 75
Summonses on medical subordinates of district to be served through District—and intimated to Civil Surgeon	30
Medical Subordinates of District—	
Summonses on—to be served through District Magistrate and intimated to Civil Surgeon	39
Medico-legal—	
Compilation of—reports	65-66
Military Employe—	
Convictions of—to be intimated to Military Department	45
Military Convicts—	
Warrants of imprisonment in case of—	23
Miscellaneous—	
Register of—matters	68
Statement of—cases	76
Monthly Returns—	
To Magistrates and Judges from Subordinate Courts	69-70
Monthly Statement—	
Average duration of cases	71
Mookhtars—	
Discretion of Court as to—appearing in defence	5
To renew certificates	61

N.

Names—	
Spelling prisoners'—	9
Nazirs—	
Scale of—, and peons' pay	56-57
Notes—	
On judicial statement No. 2	90-91
Numbers—	
Index—to prisoners	93

O.

Oaths—	
For witnesses, interpreters, and jurors	31
Offences—	
Register of convictions of heinous—	41-45, 68
Schedule of—under Act XLV of 1860	91-92
Statement of—reported and of persons tried, convicted, and acquitted ...	70, 75, 90
Statement. Number of—ascertained to have been committed in year under report, as compared with previous year	84

PAGE.

OFFICERS—
Form of letter to be sent by Committing—through the District Magistrate to the Judge 74
Magisterial—employed executively 84
Summonses on police—to be served through District or Assistant Superintendent 39, 40

P.

PAPER—
Rules regarding applications for copies of—s 66-67
Warrants of imprisonment for more than two years to be on superior— ... 22

PEONS—
District establishment of— 57-58
Scale of nazirs' and—' pay 56-57

PERJURY—
Charge of— 43

POLICE—
Limits of authority of—in certain cases 5
Summonses on—officers to be served through District or Assistant Superintendent 39-40

PORT BLAIR—
Extract from the Proceedings of the Government of India in the Home Department (—) 26-30

POSSESSORY AWARD—
Under section 530, Criminal Procedure Code... 47

PRISONERS—
Accused under more than one head of charge 93
Appeals to High Court from—in jail 13-14
Appeals to Sessions Court from—in jail 11-12
Currency of sentence on escaped— 24
Intimation of result of appeals to Sessions Court to—in jail 12
Index numbers to— 93
Residence of—to be noted in warrants of imprisonment 20
Separate warrants for each several— 19, 20
Spelling of—' names 9

PROCEEDINGS—
Extract from the—of the Government of India in regard to sentence of transportation 26-30

PROCESS—
Fees for—(Magistrates' court) 54-56
In other jurisdiction to be easily legible 58
In other jurisdiction with different language to be accompanied by translation in that language or into English 58-59
Witnesses arrested under a warrant to be treated as persons under civil— ... 40

PROPERTY—
Intestate 61, 63
Register of unclaimed and lawaris— 62, 68

PROSECUTIONS—
For false charges 48-49
Of public servants 46

PUBLIC—
Prosecutions of—servants ... ... *ib.*

PUNISHMENTS—
Statements showing—inflicted by various criminal tribunals 96-97

Q.

QUARTERLY STATEMENT—
Blank—s not to be submitted to High Court 72
Calendar of accused persons. Magistrates' and Sessions Judges'— 75, 76, 78

QUARTERLY STATEMENTS—(*Continued.*) PAGE.

Commitments 76
Instructions on—D 83
Instructions regarding the preparation of— 80-82
Miscellaneous cases—D, part II, Magistrates'... 76
Offences reported, persons tried, convicted, and acquitted 75
Result of appeal and revision 77, 82
Sessions—No. 3 78-79
Sessions—s D and E 72-74

R.

RATES—
For copying 66

RECOGNIZANCES— 40-41

RECORD—
Arrangement and disposal of—in criminal cases 63-64
Evidence to be recorded legibly and clearly, otherwise copies to accompany—in appeal to High Court 32
What papers to be included in—of commitment 7

RECORDING—
Evidence 32-33
Evidence in warrant cases 37
Of confessions 38-39
Sentences 43

RECORD-KEEPER'S REGISTER— 68

REFERENCES—
Book of—from other districts 68
In revisional jurisdiction 15-16

REFORMATORIES—
In absence of—sentences under section 318 not to be awarded 25

REGISTERS—
Attendance of witnesses (daily) 35, 36, 68
Book of appeals 68
Book of references from other districts ... ... *ib.*
Convictions of heinous offences 44-45, 68
Criminal complaints 67
Miscellaneous matters 68
Record-keeper's— ... ... *ib.*
Sentence warrants 21, 68
Unclaimed and lawaris property 62, 68

REMARKS—
Sessions Courts'—on commitment 8, 9

RELEASE—
Warrant unnecessary 22

REPORTS—
Annual—on criminal administration 84-86
Compilation of medico-legal 65-66

RESOLUTION—
Government of India—in regard to sentences of transportation 26-30

RESPONSIBILITY—
Magistrates' and Judges'—as to control over Subordinate Courts 84

RESULT—
Of appeals to Sessions Court 12
Statement,—of appeal and revision in criminal cases 77, 82, 98
Do. of criminal trials in the tribunals of various classes 94

RETURNS— PAGE.
Monthly—to Magistrates and Judges from Subordinate Courts 69,70
Warrants of capital sentence 23

REVENUE AGENTS—
And mookhtars to renew certificates 61

REVISION—
Statement showing the result of appeal and—in criminal cases 82

REVISIONAL JURISDICTION—
References in— 15-16

RULES—
For the examination of witnesses 34
Regarding applications for copies of papers 66-67
Do. the arrangement and disposal of records in criminal cases ... 64 65

S.

SCALE—
Of nazirs' and peons' pay 56-57

SCHEDULE—
Of offences unde. Act XLV of 1860 91-92

SECURITY—
For good behaviour 46-47

SENTENCE—
Appeals to be accompanied by copy of judgment and not of—merely ... 11
Currency of—on escaped prisoners 24
Date of execution of—in death warrants 22
Execution of— 16
In absence of reformatories—under section 318, Criminal Procedure Code, not to be awarded 25
Proceeding of the India Government in regard to—of transportation ... 26-30
Recording— 43
Register of—warrants 21, 68
Returns to capital—warrants 23
Table showing appeals from—and orders of Courts of Original Jurisdiction ... 88
Transportation 25-26

SESSIONS—
A—Judge quitting a district towards the end of a year is required to record his opinion on the work of his subordinates 60-61
Appeals to—Court from prisoners in jail 11-12
Commitments made whilst—are pending 8
Magistrates' calendar of accused persons before the—Court 75
Remarks of—Courts on commitment 8-9
Result of appeals to—Court 12
——— Judges' calendar of accused persons tried or brought before the—Court ... 77, 78
Statement D, part II, of commitments 79
When several persons are accused of the same offence, and the case is one for the —, all should be committed 7-8

SERVANTS—
Prosecution of public— 46

STATEMENTS—
Annual—Explanations 87
Appeals from sentences and orders of Courts of Original Jurisdiction ... 86
Blank quarterly—not to be submitted to the High Court 72
Magistrates'—D, parts I and II and E 75-76, 77-82
Sessions—D and E 72-74
D, Of offences reported and of persons tried, &c. 70, 75, 90
Average duration of cases (monthly) 71
Sessions quarterly—No. 3 78-79
Quarterly— 80-82
No. 5. Result of appeals and revision in criminal cases 98

STATEMENT (STATISTICAL—continued.) PAGE.
Number of offences ascertained to have been committed during the year under report 84
Number of persons brought to trial during the year, convicted, acquitted or discharged, and remaining under trial 85
Number of witnesses and their attendance ... ... *ib.*
Annual—No. I, Classification of courts, &c. 88-89
No. 3, Result of criminal trials in the tribunals of various classes 94
No. 4, Punishments inflicted by various criminal tribunals 96-97
Employment of juries and assessors in the Civil and Criminal Courts ... 99

SUPERINTENDENT—
In what cases—s of Jails are not to forward appeals to High Court 14
Summonses on police-officers to be served through District—or Assistant— ... 39-40

SUBORDINATE—
A Sessions Judge quitting his district towards the end of a year is required to record his opinion of the work of his— 60-61
Responsibility of Magistrates and Judges as to control over—Courts ... 84
Summonses on medical—of district to be served through District Magistrate and intimated to Civil Surgeon 39

SUDDER COURT—
Copies of letters, &c., from the—not to be granted by local authorities ... 67

SUMMONSES—
On medical subordinates of district to be served through District Magistrate and communicated to Civil Surgeon 39
On police-officers to be served through District or Assistant Superintendent ... 39-40

SUPPLEMENTARY EVIDENCE—
Before Appellate Court 14-15

SURGEON—
Summonses on medical subordinates of district to be served through District Magistrate and intimated to Civil— 39

T.

TRANSLATION—
Processes in other jurisdiction with different language to be accompanied by—in that language or in English 58, 59

TRANSPORTATION—
Sentences of— 25-30
Warrant of commitment for— 17-18

TRIALS—
Sessions'—. Commitments made whilst Sessions are pending 8

U.

UNCLAIMED PROPERTY—
Register of— 62, 68

V.

VACATION—
Dusserah 59-60

W.

WARRANTS—
Commitment 17
Commitment of an European British subject 4
Death 18
Death—how to provide for date of execution 22
Imprisonment for more than two years to be on superior paper ... ... *ib.*
Imprisonment in case of military convicts ... ... *ib.*

Release—unnecessary ... ...
Residence of prisoners to be noted in—of imprisonment ... ...
Returns to—of capital sentence ... ...
Separate—for each several prisoner 19-2
Transportation 17-18
Witnesses arrested under—to be treated as persons under civil process ... 40

WHIPPING—
General instruction on the—Act 50-54

WITNESSES—
Arrested under a warrant to be treated as persons under civil process ... 40
Daily register of—attendance 35, 36, 68
Diary of—in attendance in Magistrates' Courts 36, 68
Examination of— 33-34
Mode of calculating detention of— 36-37
Oath and affirmation 31
Particulars for identifying persons examined as— 32
Prompt examination of—after their appearance 34-35
Statement showing the number of—and their attendance 85